90

SUPREME COURT OF THE UNITED STATES.

No. 58.

SUSAN MAYBURRY, APPELLANT,

VERSUS

JOHN McPHERSON BRIEN AND OTHERS.

APPEAL FROM CIRCUIT COURT U. S. FOR MARYLAND.

INDEX.

	Original.	*Print.*
Bill of Complaint	1	3
Exhibit A. filed with the Bill	4	5
Answer of John Brien	10	8
Exhibit No. 1, filed with the answer	18	12
Exhibit No. 2, filed with the answer	25	16
Exhibit No. 3, filed with the answer	29	18
Exhibit No. 4, filed with the answer	33	20
Exhibit No. 5, filed with the answer	37	22
Exhibit No. 6, filed with the answer	101	58
Agreement	104	60
Deposition of Wm. Ross	104	60
Defendant's Interrogatories	107	62
Plaintiff's Cross Interrogatories	109	63
Bill of Revivor	113	65
Petition	116	66
Order of Court	116	67
Commission to assign Guardian	117	67
Return of Commission	118	68
Answer of the Infant	119	68
Answer of the Defendants	120	69
Admission of Counsel	121	70
Decree	122	70
Bond for Costs	123	71
Citation	124	72
Clerk's Certificate	125	72

THE UNITED STATES OF AMERICA, *District of Maryland*, to wit:

At a Circuit Court of the United States for the fourth Circuit, in and for the Maryland District, begun and held at the City of Baltimore on the first day of November, in the year of our Lord one thousand eight hundred and thirty-six.

Present, the Honourable ROGER B. TANEY, Chief Justice of the Supreme Court of the United States, UPTON S. HEATH, Judge of the Maryland District, NATHANIEL WILLIAMS, Esquire, Attorney, NICHOLAS SNIDER, Esquire, Marshal, THOMAS SPICER, Clerk.

Among other were the following proceedings, to wit.

SUSAN MAYBURRY,
vs.
JOHN MCPHERSON BRIEN, CATHERINE BRIEN, HENRY AUGUSTUS BRIEN, LUKE TIERNAN BRIEN.

Be it remembered, that heretofore, to wit, on the twenty-eighth day of March in the year of our Lord one thousand eight hundred and thirty-two, came Susan Mayburry by Charles F. Mayer her solicitor into the said Circuit Court here, and exhibited in said Court her Bill of Complaint against John Brien, in the words following, to wit.

Bill of Complaint.

To the Honourable the Judges of the Circuit Court of the United States for the Fourth Circuit, in and for the District of Maryland, setting in Equity.

The Bill of Complaint of Susan Mayburry, a citizen of the State of Virginia, respectfully represents:

That heretofore, to wit, on the fifth day of March, in the year eighteen hundred and twelve, by Deed recorded among the Land Records of Frederick County in Liber W. R. No. 41, Folio 637, &c. Baker Johnson and others conveyed in fee simple to Willoughby Mayburry and Thomas Mayburry the Catoctin Furnace situate in Frederick County aforesaid in the State of Maryland, and other lands and real estate in said deed, particularly described and thereby purported be conveyed, as by said deed will appear, a copy of which, marked A., your oratrix herewith exhibits as part of this bill. Your oratrix further states that afterwards the said Thomas Mayburry released and by deed duly executed and recorded, conveyed to said Willoughby Mayburry all said Thomas's right, title, interest, and estate, to and in said Furnace and said lands, and real

estate. And your oratrix further shows that after said release to wit, in the year eighteen hundred and twenty, a certain John Brien, now a citizen of the State of Maryland, under and by virtue of the title aforesaid of said Willoughby Mayburry and of said Thomas Mayburry became the purchaser and seized and possessed of said Furnace and the lands and real estate conveyed by said deed to said Willoughby Mayburry and said Thomas Mayburry, of which Furnace, lands and real estate said Brien has ever since continued possessed, enjoying therefrom large and valuable rents, profits, and emoluments. And your oratrix now further states that before the execution and date of the deed of Baker Johnson and others as aforesaid to said Thomas Mayburry and Willoughby Mayburry, your oratrix lawfully intermarried with said Willoughby, and so was and continued to be the wife of said Willoughby up to the time of the death of said Willoughby, which, your oratrix now states, happened on the eleventh day of February, in the year eighteen hundred and thirty. And your oratrix states and charges that although the said Brien has thus possessed and enjoyed the said Furnace and lands and real estate, and your oratrix by the death of her said husband has become entitled to dower thereof, yet the said Brien has altogether failed to assign any part thereof in dower as aforesaid to your oratrix or to allow and account to her any part of the large rents, profits, and emoluments therefrom; and your oratrix would further charge and suggest that difficulties impede her redress at law in the premises by reason of the necessity of a discovery from said Brien of his title and tenure of said Furnace and lands and real estate, and also of the rents, profits, and emoluments aforesaid received therefrom by said Brien since the accruel of your oratrix's dower right, or the death of said Willoughby; and that other impediments and difficulties producing delay, vexation, and expense, obstruct or render arduous or remote her recovery at law. And yet, as your oratrix charges, the said Brien notwithstanding the clear right of your oratrix has altogether refused to assign any dower as aforesaid to your oratrix, or to account for her dower share of said rents, profits and emoluments. All which actings and doings of said Brien are contrary to equity and tend much to the grievance of your oratrix. In tender consideration whereof and forasmuch as your oratrix is without a complete and adequate remedy in the premises except in a court of equity. To the end therefore that said John Brien, a resident of Frederick County aforesaid, may on his corporal oath true and perfect answers make to the premises as fully and minutely as if the same were here repeated particularly and he thereto were specially interrogated, and that to your oratrix may be awarded and assigned and delivered her dower of and in the said Furnace, lands, and real estate, and that said Brien may discover all the rents, profits, and emoluments as aforesaid arisen and accrued since said Willoughby's death, and may pay over to your oratrix her one-third thereof with interest, and that your oratrix may have such other and further relief in the premises as to your Honours may seem right, may it please your

Honours to grant to your oratrix the writ of the United States of America of subpœna directed to said John Brien commanding him by a certain day to be in this Honourable Court to answer the premises and therein to stand to and abide by such order and decree as to your Honours shall appear just.

R. JOHNSON,
CHARLES F. MAYER,
Solr. of Compl't.

(*Complainant's Exhibit A.—filed with the Bill.*)

CATHERINE JOHNSON, BAKER JOHNSON, AND WILLIAM ROSS, *to* WILLOUGHBY AND THOMAS MAYBURRY. } Deed Recorded in Liber W. R. No. 41, folios 637, 638, 639, 640, and 641.

This Indenture, made this fifth day of March in the year of our Lord one thousand eight hundred and twelve, between Catherine Johnson, Baker Johnson, and William Ross, all of the County of Frederick and State of Maryland of the one part, and Willoughby Mayburry and Thomas Mayburry of the City of Philadelphia and State of Pennsylvania of the other part.

Whereas Col. Baker Johnson, late of the Town and County of Frederick, deceased, was in his lifetime seized of and in one Iron Furnace called Catoctin, erected on Little Hunting Creek, and also of divers and sundry tracts of land, and parts of tracts of land, all lying, being, and situate in the County of Frederick and State of Maryland, and the said Col. Baker Johnson being so seized, by his last Will and Testament, in writing duly made, bearing date the twenty-second day of February, in the year eighteen hundred and nine, and by his Codicil to the same Will annexed, bearing date the seventh day of March, eighteen hundred and eleven, both of which have since been duly proven and recorded, amongst other things, did devise to his four daughters to wit, Catherine W. Ross, Juliana E. W. Johnson, Matilda Chase Johnson, and Caroline W. G. Johnson, in fee simple Catoctin Furnace and all the Lands annexed and appropriated to it, (reserving the water as it now runs for the Mills at Baker's,) viz. Good Mill, Stoney Park, Woodland, Poplar Bottom, also eighty acres of Land, part of the first dividend conveyed to him by Nicholas Carrol, Esquire, and all his part of the Mountain tract, (except Lot No. 1, which he devised to his son Baker Johnson, party hereto,) and by his Codicil he, the said Col. Baker Johnson, directs his executors to sell the said Furnace and the Lands thereto attached, and empowers the said Executors to sell and convey on such terms and in such manner as to them shall seem and appear to be most beneficial, and directs the proceeds of the said sale to be equally divided among his said four Daughters, share and share alike, and also directs that his Executors shall cause to be laid off and run out a line from the gate which stands

between the Overseer's House and the other farm-house, running a course with the commencement of the fence, to intersect the first line of the Green Spring Tract, also another line to be run from the said Gate to the end of the stone-fence that is begun to be made on the side of the road leading to my son Baker's House. And that all the land lying on the north of said lines, and between said lines and the land divided with William Bayly, and also all the Lands he purchased of the said William Bayly, shall be considered as attached to the Furnace lands and be sold and conveyed therewith, if in the opinion of his Executors it shall be necessary to sell the same with the Furnace. And of his said Will appointed the aforesaid Catherine Johnson, Baker Johnson, and William Ross, parties hereto, his Executors; who took upon themselves the burthen of the execution thereof, and whereas Catherine Johnson, Baker Johnson, and William Ross considering it necessary, and that it would facilitate the sale and increase the value of the said Furnace and Lands, had the lines run as directed by the said Willand, attached the same and all the Lands divided and bought of William Bayly with the Furnace and the Furnace Lands; and on the fifteenth day of August, in the year eighteen hundred and eleven, at private sale sold the said Catoctin Furnace with all the said Land thereto attached, as aforesaid, unto Willoughby Mayburry and Thomas Mayburry, for the sum of twelve thousand five hundred pounds current money of the State of Maryland.

Now this Indenture Witnesseth that the said Catherine Johnson, Baker Johnson, and William Ross, parties hereto, by virtue of the Testament and last Will and Codicil aforesaid, in consideration of the premises and of the said sum of twelve thousand five hundred pounds to them in hand paid by the said Willoughby and Thomas Mayburry at or before the ensealing and delivery of these presents, the receipt whereof they do hereby acknowledge, and thereof and therefrom do release, acquit and discharge the said Willoughby Mayburry and Thomas Mayburry, their heirs, executors, administrators, and assigns, and every of them, by these presents, have given, granted, bargained, sold, aliened, released, enfeoffed, and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff, and confirm unto them, the said Willoughby Mayburry and Thomas Mayburry, their heirs and assigns, the said Iron Furnace, called Catoctin, and all the following tracts of Land, and parts of tracts of Land, as fully to all intents and purposes as Col. Baker Johnson held the same, to wit, Good Will, Stoney Park, Woodland, Poplar Bottom, all that part of the Mountain Land belonging to Col. Baker Johnson, excepting Lot No. 1, all that part of the first dividend of which Col. Baker Johnson died seized, excepting two hundred and fifteen acres of Land which had been laid off to Jacob Christ, and by the Will of the said Col. Baker Johnson devised to his son William Johnson, all the Land included within the lines run by the Executors as aforesaid, and all the Land divided with or purchased of William Bayly, and also all right that Col. Baker Johnson had in or to any ore on the Lands of Henry

Frailey, or on the Lands of the late Col. James Johnson, deceased, together with all the houses, buildings, gardens, orchards, ways, waters, water-courses, woods, underwoods, easements, privileges, improvements, advantages and appurtenances whatsoever to the said premises belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, use, trust, possession, property, claim and demand both in Law and Equity of them, the said Col. Baker Johnson, deceased, and Catherine Johnson, Baker Johnson, and William Ross, parties hereto, and each of them of into or out of the same. To have and to hold the said Iron Furnace, lands, tenements, and hereditaments hereby conveyed or intended so to be to the aforesaid Willoughby Mayburry and Thomas Mayburry, their heirs and assigns, to the only proper use and behoof of the aforesaid Willoughby Mayburry and Thomas Mayburry, their heirs and assigns for ever, and to and for no other use, intent, or purpose whatsoever, and the said Catherine Johnson, Baker Johnson, and William Ross, for themselves, their heirs, executors, and administrators do hereby covenant and grant to and with the aforesaid Willoughby Mayburry and Thomas Mayburry, their *heirs* and assigns, that they will at any time or times hereafter at the reasonable request, costs and charges of the aforesaid Willoughby Mayburry and Thomas Mayburry make, do, and execute any such further act, deed, or assurance as they shall be legally authorized to make for the better and more effectual conveying the said premises to the aforesaid Willoughby Mayburry and Thomas Mayburry, their heirs and assigns. In witness whereof the said parties to these presents have hereunto set their hands and affixed their seals the day and year above written.

Signed, sealed and delivered in the presence of
HENRY KUHN,
THOMAS B. JONES.

CATHERINE JOHNSON, [SEAL.]
BAKER JOHNSON, [SEAL.]
WM. ROSS. [SEAL.]

Received on the day and year within written of, and from the within named Willoughby Mayburry and Thomas Mayburry, the sum of twelve thousand five hundred pounds, current money, being the consideration money within mentioned to be by them paid to us.

Witness present,
HENRY KUHN,
THOMAS B. JONES.

CATHERINE JOHNSON,
BAKER JOHNSON,
WM. ROSS.

STATE OF MARYLAND, *Frederick County*, ss.

Be it remembered that on this fifth day of March, in the year of our Lord eighteen hundred and twelve, personally appears Catherine Johnson, Baker Johnson and William Ross the parties within named, before us, the subscribers, two Justices of the Peace in and for the County aforesaid, and acknowledge the within Deed or In-

strument of writing to be their act and deed, and the Furnace and Lands and premises therein mentioned, and thereby bargained, and sold to be the right and estate of the within named Willoughby Mayburry and Thomas Mayburry party grantees also therein named, their heirs and assigns for ever, according to the purport, true intent and meaning of the said Deed and the Acts of Assembly in such case made and provided. Taken and certified the day and year above written.

HENRY KUHN.
THOMAS B. JONES.

MARYLAND, *Frederick County*, ss.

I do hereby Certify that the foregoing is a true Copy taken from Liber W. R., No. 41, Folios 637, 638, 639, 640 and 641, one of the Land Records of Frederick County.

[SEAL.] In testimony whereof I hereunto affix my Seal of Office this 23d March, 1832.

JOHN SCHLEY, *Clerk.*

Afterwards, to wit, on the twenty-fourth day of May, in the year of our Lord one thousand eight hundred and thirty-two, the said John Brien by Jonathan Meredith his Solicitor, filed in the said cause his answer and exhibits in the words following, to wit:

The answer of John Brien, the Defendant, to the Bill of Complaint of Susan Mayburry, filed in the Circuit Court of the United States for the Fourth Circuit, in and for the District of Maryland, setting in Equity.

The said Defendant, saving and reserving to himself now, and at all times hereafter, all and all manner of benefit and advantage of exception, to the manifold uncertainties and imperfections in the Complainant's said Bill of Complaint contained, for answer thereunto, or unto so much thereof as materially concerns this Defendant to make answer unto, he answereth and saith that Willoughby and Thomas Mayburry, both being citizens of the State of Pennsylvania in the year 1812, contracted with the Executors of Baker Johnson, deceased, for "The Catoctin Furnace," and certain lands connected therewith, situate in Frederick County, in the State of Maryland. That in the said contract, and as a part of it, the said Willoughby and Thomas agreed, that if said Executors would convey said Furnace and Lands to them, that they would immediately reconvey the same to said Executors, by deed of mortgage, to secure the payment of the purchase money for the same to said Executors, they not being able to give sufficient personal security for the payment of said purchase money, being themselves strangers in the State of Maryland, that the sale of said property was accordingly made on said terms. That William Ross, Esquire, one of said Executors, and a Counsellor at Law, resided in Frederick Town, was the active Executor, and had the sole management

and arrangement of said sale, with the consent of the other Executors. That Baker Johnson, one of said Executors, lived about twelve miles distant from Frederick Town, and was seldom in Frederick Town. That the said Thomas and Willoughby Mayburry having promised to complete their said purchase in the month of March in the year 1812, the said William Ross prepared the Deed to be executed by said Executors, as also the Mortgage to be executed by the said Mayburrys, according to said agreement, and held the same in readiness for execution. That on the fifth day of March, 1812, the said Baker Johnson, being in Frederick Town, the said William Ross availed himself of that opportunity and had the said Deed, a copy of which marked J. B. No. 1, is herewith exhibited, and which he prays may, together with all other exhibits hereafter to be made by him, be taken and considered as a part of this his answer, executed and acknowledged and ready to be delivered to the said Willoughby and Thomas Mayburry, upon their executing their Bonds and said Mortgage to secure to said Executors the payment of the purchase money for said Furnace and Lands, described in said Deed. That after the said Deed was signed and acknowledged by said Executors, on the fifth of March, 1812, the same was left in the hands of said Ross for safe keeping, and not to be delivered as the act and deed of said Grantors to said Willoughby and Thomas Mayburry until the said Willoughby and Thomas executed and delivered to said Executors their bonds for the payment of the purchase money aforesaid, and also cotemporaneously with, and as forming a part of said transaction, in pursuance of said agreement of sale, executed and delivered to said Executors said Deed of Mortgage, to secure the payment of said purchase money. This Defendant further answering says that on the nineteenth day of March in the year 1812, the said Willoughby and Thomas Mayburry went to Frederick Town, and on that day executed their bonds for the payment of said purchase money to said Executors, and also executed and acknowledged the Mortgage, a copy of which marked J. B. No. 2, is herewith exhibited. That on the said nineteenth day of March, in the year eighteen hundred and twelve, and not before, the said Deed, of which said exhibit marked J. B. No. 1, is a true copy, was delivered to the said Willoughby and Thomas Mayburry by the said William Ross, as the act and deed of the said Grantors, and at the same moment, as simultaneous acts, the Bonds for the payment of the purchase money, and the mortgage, of which exhibit marked J. B. No. 2, is a true copy, to secure the payment of said purchase money, were delivered by the said Willoughby and Thomas Mayburry to the said Executors, the obligees and mortgagees therein named, in compliance with, and pursuance of the agreement of the sale between said parties, as aforesaid. That after the Bonds, Deed and Mortgage were thus mutually delivered on the said nineteenth day of March, 1812, the said parties, on the same day, and in company with each other carried to the Clerk's Office of Frederick County aforesaid, the said Deed and Mortgage, and left the same with the

Clerk to be recorded, and the same were, on the same day, accordingly recorded.

The said Defendant further answering says, that afterwards, to wit, on the ninth of March, in the year 1813, the said Thomas Mayburry agreed to sell his Interest in said Catoctin Furnace and said lands to the said Willoughby Mayburry, and to convey the same to him, provided said Willoughby would, at the same time, and as a simultaneous act, reconvey the same to said Thomas by his deed of Mortgage, to secure effectually the purchase money to be paid to said Thomas by said Willoughby, for the same. That on the said ninth day of March, in the year 1813, the said Willoughby Mayburry executed his bonds to said Thomas for the purchase money, and the said Thomas executed the Deed, of which exhibit marked J. B. No. 3, is a true copy, and the said Willoughby at the same time, and as a simultaneous act, executed the Mortgage, of which exhibit marked J. B. No. 4, is a copy; that the said Deed from Thomas to Willoughby Mayburry, and the said Mortgage from Willoughby to Thomas Mayburry, were executed, acknowledged, and delivered by the respective parties, at the same time, as simultaneous acts in compliance with and pursuance of the said agreement of sale made between said parties, and for the purpose of securing to said Thomas the payment of said purchase money from said Willoughby. That the said Deed and Mortgage were prepared by said William Ross at the request of said parties, and executed in his office, in Frederick Town, and were afterwards, on the same day, to wit, the twentieth day of July, in the year 1813, placed in the office of the Clerk of Frederick County to be recorded, and were accordingly recorded. This Defendant further answering says, that the said Willoughby and Thomas Mayburry having failed to pay the purchase money for said Furnace and lands to the executors of said Baker Johnson, deceased, the said William Ross and Baker Johnson, as the surviving executors, the said Catherine Johnson, the other executor being then dead, filed their Bill of Complaint in Frederick County Court, setting as a Court of Equity, to compel a payment of said purchase money by a sale of said property. That the said Bill of Complaint was filed on the 25th day of March, in the year 1820, that the said Willoughby Mayburry, not being able to pay said purchase money, and not having paid to said Thomas Mayburry the purchase money due to him as aforesaid, the said Court ordered and decreed the said property so sold and mortgaged as aforesaid, to be sold at Public Sale to the highest bidder, and appointed one Daniel King the trustee to make said sale, that said Trustee offered said property for sale on the second day of May, in the year 1820, to the highest bidder. That this Defendant was the highest bidder, and became the purchaser of said property at the price and for the sum of twenty-seven thousand, five hundred and five Dollars, and was so reported to said Court. That at the time this Defendant bid for said property, he believed the same to be free from all incumbrances whatever, and therefore bid a full price for the same. That

before said sale was ratified by said Court, this Defendant was informed that there might possibly at some future period, in the event of the wife of said Willoughby Mayburry surviving her said husband, be an incumbrance of dower on said property claimed by her. That this Defendant thereupon immediately filed his petition to said Court, setting forth said Deeds to said Willoughby and said Mortgages executed by him, and suggesting a fear that the said property might at some future period be incumbered with a right of dower by the wife of said Willoughby, stating that the said property had been sold free of all incumbrances by said Trustee, and praying that he might be discharged from his said bid, and that said sale might not be ratified and confirmed by said Court. That the said Court after a full hearing of said case on said petition, and an examination of said Deeds and Mortgages, and the circumstances under which, and the purposes for which they were executed, was of opinion that the wife of said Willoughby could, under no circumstances or contingencies whatever, have any right of dower in said property or any part thereof, and that this Defendant, if confirmed as the purchaser, would take and hold the same free and clear of all incumbrances whatever; and accordingly ratified and confirmed said sale and compelled this Defendant to take and pay for said property as the purchaser thereof. That this Defendant feeling perfectly secure in his said title, after all that had thus taken place, and after his vigilant and cautious course in reference to the same, paid to said Trustee the full amount of said purchase money. All which will more fully and regularly appear by reference to the said proceedings in said Court, a full record of which is herewith exhibited as a part of this answer, marked J. B. No. 5. That after the payment of said purchase money to said Trustee by this Defendant, the said Trustee conveyed to him the said property so purchased as aforesaid, by his Deed, duly executed, acknowledged, delivered and recorded, a copy of which is herewith exhibited, marked J. B. No. 6, and this Defendant has ever since held and enjoyed the same under and by virtue of the said sale and conveyance to him. And this Defendant further answering, says, that the money paid by him to said Trustee for said property, was applied under the Decree of said Court, to within a small sum of the full amount thereof, in payment of the purchase money due to the executors of the said Baker Johnson as aforesaid, and of the purchase money due to said Thomas Mayburry by said Willoughby as aforesaid, and that that small sum was applied to the payment of other creditors of said Willoughby, as will more fully and particularly appear by reference to the Record of the said proceedings, already exhibited by this Defendant. And this Defendant further answering, admits that the Complainant is the Widow of the said Willoughby Mayburry, but he denies that under the facts and circumstances aforesaid, she has any right of Dower in said Furnace and real estate, or any claim on this Defendant for any right of Dower in the same, and he relies and insists upon his said title, as a full and complete bar to any right or claim of Dower of the com-

plainant, as the Widow of said Willoughby, upon him, or upon the said real estate now held and possessed by him, under his said purchase of, and title to the same. This Defendant further answering says, that since his purchase of said property, and before the death of said Willoughby, he expended large sums of money in the erection of buildings and other valuable improvements on said estate, and that the same is now worth many times and dollars more than it was at the time he purchased it; but he denies all right of the Complainant to any part thereof, without that, that there is any other matter or thing material or necessary for this Defendant to make answer unto, and not herein and hereby well and sufficiently answered unto, confessed or avoided, traversed, or denied, is true. All which matters and things this Defendant is ready to aver and prove, as this Honourable Court shall direct and award, and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

JN. BRIEN.

J. MEREDITH,
Sol. for Defts.

On this 26th day of April, 1832, John Brien, the within named defendant, appeared before me the subscriber a justice of the peace of the State of Maryland, for Baltimore City, and made oath on the Holy Evangely of Almighty God, that the several matters and things contained in the foregoing answer are true as therein stated and set forth to the best of his knowledge, information and belief.

Sworn before me,

JNO. EBERT.

STATE OF MARYLAND, *Frederick County*, to wit.

I hereby certify that John Ebert, Esquire, before whom the foregoing affidavit was made, and whose name is thereto subscribed, was at the time thereof, and now is a Justice of the Peace, for the State of Maryland in and for Frederick County, duly commissioned and sworn.

In testimony whereof I hereunto subscribe my name and
[SEAL.] affix the seal of Frederick County Court this 26th day of April, 1832.

JOHN SCHLEY, Clk.

(*Defendant's Exhibit J. B. No.* 1—*filed with the answer.*)

CATHERINE JOHNSON,
BAKER JOHNSON, AND
WILLIAM ROSS,
to
WILLOUGHBY AND THOMAS MAYBURRY.

At the request of Willoughby and Thomas Mayburry, the following deed is recorded March 19th, 1812.

This Indenture, made this fifth day of March in the year of our

Lord one thousand eight hundred and twelve, between Catherine Johnson, Baker Johnson and William Ross, all of the County of Frederick and State of Maryland, of the one part, and Willoughby Mayburry and Thomas Mayburry of the city of Philadelphia and State of Pennsylvania, of the other part: Whereas Col. Baker Johnson, late of the town and county of Frederick, deceased, was in his lifetime, seized of and in one Iron Furnace, called "Catoctin," erected on Little Hunting Creek, and also of divers and sundry tracts of land and parts of tracts of land, all lying, being and situate in the County of Frederick and State of Maryland, and the said Col. Baker Johnson, being so seized, by his last will and testament in writing duly made, bearing date the twenty-second day of February, in the year eighteen hundred and nine, and by his codicil to the same will annexed, bearing date the seventh day of March, eighteen hundred and eleven, both of which have been since duly proved and recorded, amongst other things, *did* devise to his four daughters, to wit, Catherine W. Ross, Juliana E. W. Johnson, Matilda Chase Johnson, and Caroline W. G. Johnson, in fee simple, "Catoctin Furnace," and all the lands annexed and appropriated to it (reserving the water as it now runs for the Mills at Baker's), viz. "Good Will," "Stoney Park," "Woodland," "Poplar Bottom," also eighty acres of land, part of the first dividend conveyed to him by Nicholas Carrol, Esquire, and all his part of the Mountain Tract (except Lot No. 1, which he devised to his son Baker Johnson, party hereto), and by his codicil he, the said Col. Baker Johnson, directs his Executors to sell the said Furnace and the lands thereto attached, and empowered the said Executors to sell and convey on such terms and in such manner as to them shall seem and appear to be most beneficial, and directs the proceeds of the said sale to be equally divided among his said four daughters, share and share alike, and also directs that his Executors shall cause to be laid off and run out a line from the gate which stands between the Overseer's house and the other farm house, running a course with the commencement of the fence to intersect the first line of the "Green Spring" tract, also another line to be run from the said gate to the end of the stone fence that is begun to be made on the side of the road leading to my son Baker's house; and that all the land lying on the north of said lines and between said lines, and the land he divided with William Bayly and also all the lands he purchased of the said William Bayly, shall be considered as attached to the furnace lands and be sold and conveyed therewith, if in the opinion of his Executors it shall be necessary to sell the same with the Furnace; and of his said Will appointed the aforesaid Catherine Johnson, Baker Johnson and William Ross, parties hereto, his Executors, who took upon themselves the burthen of the execution thereof, and whereas the said Catherine Johnson, Baker Johnson and William Ross, considering it necessary, and that it would facilitate the sale of increase the value of the said Furnace and lands, had the lines run as directed by the said Will, and attached the same, and all the lands divided and bought of William

Bayly with the furnace and the Furnace Lands, and on the fifteenth day of August in the year eighteen hundred and eleven at private sale, sold the said Catoctin Furnace, with all the said lands thereto attached as aforesaid, unto Willoughby Mayburry and Thomas Mayburry for the sum of twelve thousand five hundred pounds current money of the State of Maryland.

Now this Indenture witnesseth, that the said Catherine Johnson, Baker Johnson, and William Ross, parties hereto, by virtue of the testament and last will and codicil aforesaid, in consideration of the premises, and of the said sum of twelve thousand five hundred pounds to them in hand paid by the said Willoughby Mayburry, and Thomas Mayburry, at or before the ensealing and delivery of these presents, the receipt whereof they do hereby acknowledge, and thereof and therefrom do release, acquit and discharge the said Willoughby Mayburry and Thomas Mayburry, their heirs, executors, administrators and assigns, and every of them by these presents, have given, granted, bargained, sold, aliened, released, enfeoffed and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff and confirm unto them the said Willoughby Mayburry and Thomas Mayburry, their heirs and assigns, the said Iron Furnace, called "Catoctin," and all the following tracts of land, and parts of tracts of land, as fully to all intents and purposes as Col. Baker Johnson held the same, to wit, "Good Will," "Stoney Park," "Woodland," "Poplar Bottom," all that part of the mountain land belonging to Col. Baker Johnson, excepting Lot No. 1; all that part of the first dividend of which Col. Baker Johnson died seized, excepting two hundred and fifteen acres, which had been laid off to Jacob Christ, and, by the will of the said Col. Baker Johnson, devised to his son William Johnson, all the land included within the lines run by the executors as aforesaid, and all the land divided with, or purchased of William Bayly, and also all right, that Col. Baker Johnson had in or to any ore on the lands of Henry Frailey, or on the lands of the late Col. James Johnson, deceased. Together with all the houses, buildings, gardens, orchards, ways, waters, water courses, woods, underwoods, easements, privileges, improvements, advantages, and appurtenances whatsoever to the said premises belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, use, trust, possession, property, claim and demand, both in law and equity of them, the said Col. Baker Johnson, deceased, and Catherine Johnson, Baker Johnson, and William Ross, parties hereto, and each of them of, in, to, or out of the same. To have and to hold, the said Iron Furnace, lands, tenements and hereditaments, hereby conveyed, or intended so to be, to the aforesaid Willoughby Mayburry and Thomas Mayburry, their heirs and assigns, to the only proper use and behoof of the aforesaid Willoughby Mayburry and Thomas Mayburry, their heirs and assigns for ever, and to and for no other use, intent or purpose whatsoever, and the said Catherine Johnson, Baker Johnson and William Ross,

for themselves, their heirs, executors and administrators, do hereby covenant and grant to and with the aforesaid Willoughby Mayburry and Thomas Mayburry, their heirs and assigns, that they will, at any time or times hereafter, at the reasonable request, costs and charges of the aforesaid Willoughby Mayburry, make, do, and execute any such further act, deed, or assurance, as they shall be legally authorized to make for the better and more effectual conveying the said premises to the aforesaid Willoughby Mayburry and Thomas Mayburry, their heirs and assigns.

In witness whereof, the parties to these presents have hereunto set their hands and affixed their seals, the day and year above written.

Signed, sealed, and delivered in the presence of HENRY KUHN, THOMAS B. JONES. } CATHERINE JOHNSON. [SEAL.] BAKER JOHNSON. [SEAL.] WILLIAM ROSS. [SEAL.]

Which is thus endorsed, viz.

Received on the day and year within written, of and from the within named Willoughby Mayburry and Thomas Mayburry, the sum of twelve thousand five hundred pounds, current money, being the consideration money within mentioned to be by them paid to us.

Witnesses present, HENRY KUHN, THOMAS B. JONES. } CATHERINE JOHNSON, BAKER JOHNSON, WILLIAM ROSS.

STATE OF MARYLAND, *Frederick County, ss.*

Be it remembered, that on this fifth day of March, in the year of our Lord eighteen hundred and twelve, personally appears Catherine Johnson, Baker Johnson, and William Ross, the parties within named before us, the subscribers, two justices of the peace in and for the county aforesaid, and acknowledge the within deed or instrument of writing, to be their act and deed, and the Furnace and lands and premises therein mentioned and thereby bargained and sold, to be the right and estate of the within named Willoughby Mayburry and Thomas Mayburry, party grantees also therein named, their heirs and assigns for ever, according to the purport, true intent and meaning of the said deed, and the acts of assembly in such case made and provided. Taken and certified the day and year above written.

HENRY KUHN,
THOMAS B. JONES.

MARYLAND, sct.

I hereby certify the aforegoing deed is a correct copy of the original, taken from the Land Records of Frederick county, Liber W R. No. 41, folios 637, 638, 639, 640, and 641.

In testimony whereof, I have hereunto subscribed my name and affixed my seal of office, this 11th of April, 1832.

[SEAL.]

JOHN SCHLEY,
Clerk Frederick County Court.

(*Defendant's Exhibit J. B. No. 2—filed with the answer.*)

This Indenture, made this nineteenth day of March, in the year of our Lord eighteen hundred and twelve, between Willoughby Mayburry and Thomas Mayburry of the City of Philadelphia, of the one part, and Catherine Johnson, Baker Johnson, and William Ross of Frederick County and State of Maryland, of the other part: Whereas the said Willoughby Mayburry and Thomas Mayburry, by their five several Bonds duly executed, bearing date the nineteenth day of March, in the year aforesaid, stand bound unto the said Catherine Johnson, Baker Johnson, and William Ross, their executors, administrators, and assigns, in the penal sum of twenty-five thousand pounds, current money, with a condition under the first four bonds for the payment of two thousand pounds, each, current money, the fifth bond, with a condition thereunder written for the payment of two thousand five hundred pounds, the bonds are payable yearly, to wit, the first bond payable the first of April, eighteen hundred and thirteen, and so on, yearly, until the whole are paid, with legal interest for the same from the time they severally became due, as by the said bonds and conditions may more fully appear. Now this Indenture witnesseth, that the said Willoughby and Thomas Mayburry, in consideration of the said debt or sum of twenty-five thousand pounds owing to the said Catherine, Baker, and William as aforesaid, and for the better securing the payment thereof, with interest, to the said Catherine, Baker, and William, their heirs, executors, administrators or assigns, according to the condition of the said Bonds, and also in consideration of the further sum of one dollar to them in hand paid by the said Catherine, Baker, and William before the ensealing and delivery of these presents, the receipt whereof the said Willoughby and Thomas do hereby acknowledge, have granted, bargained, sold, released, and confirmed, and by these presents do grant, bargain, sell, release, and confirm unto the said Catherine, Baker, and William, and to their heirs and assigns, the Iron Furnace, called "Catoctin," and all the lands attached thereto, situate in Frederick County, as fully and to the same extent as we hold and are entitled to the same in pursuance of a deed of conveyance made to us by the said Catherine, Baker, and William, bearing date the fifth day of March, eighteen hundred and twelve. To have and to hold the said Iron Furnace and the lands aforesaid with the appurtenances, unto the said Catherine, Baker, and William, their heirs and assigns, to the only proper use of the said Catherine, Baker, and William, their heirs and assigns for ever, and to and for no other use, intent, or purpose whatsoever. Provided always, and it is the true intent and mean-

ing of these presents, and of the said parties hereunto, that if the said Willoughby and Thomas, their heirs, executors, or administrators, do and shall, well and truly pay or cause to be paid unto the said Catherine, Baker, and William, their executors, administrators, or assigns, the sum of twelve thousand five hundred pounds, being the real sum, with legal interest for the same, according to the condition of the above in part recited bonds, without any deduction or abatement whatsoever, then and from thenceforth these presents shall cease and be void, any thing herein contained to the contrary thereof notwithstanding; And the said Willoughby and Thomas, for themselves, their heirs, executors, and administrators do covenant and agree to and with the said Catherine, Baker, and William, their executors, administrators, and assigns, in manner and form following, that is to say, that they the said Willoughby and Thomas, their heirs, executors, or administrators, shall and will, well and truly pay or cause to be paid unto the said Catherine, Baker, or William, their executors, administrators, or assigns, the said sum of twelve thousand five hundred pounds, with legal interest as aforesaid, on the days herein before limited for payment thereof, without any deduction or abatement whatsoever, as aforesaid, and that the said granted and released premises now are and at all times from and after default shall happen to be made of or in payment of the said sum of twelve thousand five hundred pounds and interest as aforesaid, or any part thereof, shall for ever be, remain, and continue free and clear from all manner of form and other gifts, grants, bargains, sales, mortgages, judgments, charges, or incumbrances whatsoever heretofore made, done, or suffered by them the said Willoughby and Thomas, and that the said Catherine, Baker, and William, their heirs and assigns, shall and may from time to time and at all times after any such default shall happen to be made in the payment of the said sum of twelve thousand five hundred pounds and interest as aforesaid, or any part thereof, peaceably and quietly have, hold, possess and enjoy, all and singular the said premises, without the let, interruption or disturbance of them, the said Willoughby and Thomas, their heirs or assigns, or of any person or persons lawfully claiming or to claim by, from or under them or any of them, and lastly it is agreed by and between both parties, that until default of payment as aforesaid is made, that the said Willoughby and Thomas are to continue in full possession of the premises aforesaid, enjoying all the rents and profits thereof to their own particular use and benefit, any thing herein contained to the contrary thereof in any wise notwithstanding,

In witness whereof the parties have hereunto set their hands and seals the day and year first above written.

Witness Present,
THOMAS B. JONES,
PETER BURK HART.

WILL. MAYBURRY, [SEAL.]
THOMAS MAYBURRY. [SEAL.]

STATE OF MARYLAND, *Frederick County, ss.*

Be it remembered, that on this nineteenth day of March, eighteen hundred and twelve, personally appears Willoughby Mayburry and Thomas Mayburry, the parties within mentioned, before us, the subscribers, two justices of the peace in and for the county aforesaid, and acknowledge the above instrument of writing to be their act and Deed, and the Furnace, the lands, and the premises therein mentioned and thereby mortgaged, to be the right and estate of the within and above named Catherine Johnson, Baker Johnson, and William Ross, their heirs and assigns, for ever, according to the purport, true intent, and meaning of the said instrument of writing, and the acts of Assembly in such case made and provided.

Taken and certified the day and year above written.

Before

THOMAS B. JONES,
PETER BURK HART.
Maryland.

MARYLAND, SS.

I hereby certify that the above is a true Copy of the original deed recorded, March 19th, 1812, among the Land Records of Frederick County, in Liber W. R. No. 41, Folios 641, &c.

In Testimony whereof I hereto subscribe my name and affix the seal of my office this 13th day of April, 1832.

[SEAL.]

JOHN SCHLEY, *Clerk,*
Frederick County Court.

(*Defendant's Exhibit J. B. No. 3—filed with the answer.*)

This Indenture, made this ninth day of March, in the year of our Lord one thousand eight hundred and thirteen, between Thomas Mayburry of Frederick County and State of Maryland of the one part, and Willoughby Mayburry of the County and State aforesaid of the other part, witnesseth that the said Thomas Mayburry for and in consideration of the sum of twenty thousand dollars, current money of the United States, to him in hand paid by the said Willoughby Mayburry, before the ensealing and delivery of these presents, the receipt whereof he, the said Thomas Mayburry doth hereby acknowledge; and from every part and parcel thereof doth hereby acquit, exonerate, and discharge the said Willoughby Mayburry, his heirs, executors and administrators, he, the said Thomas Mayburry hath granted, bargained, sold, aliened, enfeoffed, and confirmed, and by these presents doth grant, bargain, sell, alien, enfeoff and confirm unto the said Willoughby Mayburry, his heirs and assigns, all his one full equal undivided moiety or half part of the Iron Furnace called "Catoctin," and his equal undivided moiety or half part of all the following tracts of land and parts of tracts of land,

situate, lying, and being in the County and State aforesaid, to wit, "Good Will," "Stoney Park," "Woodland," "Poplar Bottom," all that part of the mountain land, all that part of the first dividend sold and conveyed to the said Thomas and Willoughby by the executors of Col. Baker Johnson, and all the lands included within the lines run by the executors aforesaid, and the land divided with or purchased of William Bayly by the executors aforesaid, and all my equal undivided moiety or half part of the Furnace and lands attached thereto as fully as the same was conveyed to us, the said Thomas and Willoughby by the executors of Col. Baker Johnson as by reference to the same deed will more fully and at large appear, and also all my right to any ore on the lands of Henry Frailey, or on the lands of the late Col. James Johnson, deceased: Together with all and singular the buildings, improvements, woods, ways, waters and water courses, hereditaments and appurtenances whatsoever, thereunto belonging or in any wise appertaining, and the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title and interest whatsoever, of him, the said Thomas Mayburry, both at law and in equity of, in, to and out of the said Furnace and lands attached thereto and premises, hereby bargained and sold, or meant hereby so to be, and every or any part and parcel thereof. To have and to hold the said one full equal and undivided moiety or half part of the Furnace and lands so as aforesaid described, called "Catoctin Furnace," together with the buildings and appurtenances, and all and singular other the premises hereby bargained and sold, or meant hereby so to be, with their and every of their appurtenances, unto the said Willoughby Mayburry his heirs and assigns for ever, and to and for no other use, intent or purpose whatsoever; And the said Thomas Mayburry for himself, his heirs, executors and administrators, doth hereby covenant and agree to and with the said Willoughby Mayburry and his heirs, executors, administrators or assigns, that he, the said Thomas Mayburry and his heirs, the said Furnace and tracts of land and premises hereby granted to him, the said Willoughby Mayburry, his heirs, and assigns against him the said Thomas Mayburry and his heirs, and against all and every person or persons whatsoever claiming or to claim any right or title by, from, or through him or them, shall and will hereafter warrant and for ever defend by these presents.

In witness whereof, the said Thomas Mayburry hath hereunto subscribed his name and affixed his seal the day and year first herein before written.

Signed, sealed and delivered in the presence of us,
THOMAS B. JONES,
GEORGE KOLB.

THOMAS MAYBURRY. [SEAL.]

Received, on the day of the date of the within deed from the

within named Willoughby Mayburry, the sum of twenty thousand dollars, being the consideration money in the said deed.

Witness present,
GEORGE KOLB. } THOMAS MAYBURRY.

STATE OF MARYLAND, *Frederick County, ss.*

Be it remembered that on the thirteenth day of March, in the year eighteen hundred and thirteen, personally appears Thomas Mayburry, the party grantor, within named, before us, the subscribers, two Justices of the Peace, in and for the County aforesaid, and acknowledges the within deed or instrument of writing to be his act and deed, and the Furnace and the land therein mentioned to be the right and estate of the within named Willoughby Mayburry, party grantee also therein named, his heirs and assigns for ever, according to the true intent of the said deed, and the acts of Assembly in such case made and provided.

Taken and certified the day and year above written.

THOMAS B. JONES,
GEORGE KOLB.

MARYLAND, *Frederick County, ss.*

I hereby certify, that the aforegoing is a correct copy of the original deed deposited in my office for record, July 20th, 1813, and recorded among the Land Records of Frederick County, in Liber W. R. No. 44, Folios 723, &c.

[SEAL.] In testimony whereof, I have hereunto subscribed my name, and affixed the seal of Frederick County Court, this twelfth day of April, A. D. 1832.

JOHN SCHLEY,
Clerk Frederick County Court.

(*Defendant's Exhibit J. B. No. 4—filed with the answer.*)

WILLOUGHBY MAYBURRY to THOMAS MAYBURRY on Catoctin Furnace. } Deed dated 9th March, 1813, and Recorded in Liber W. R. No. 44, Folios 725, 726, and 727.

This Indenture, made this ninth day of March, in the year eighteen hundred and thirteen, between Willoughby Mayburry of Frederick County and State of Maryland of the one part, and Thomas Mayburry of the county and state aforesaid of the other part, Whereas the said Willoughby, by his three several obligations duly executed, bearing date the ninth of March in the year aforesaid, stands bound

unto the said Thomas Mayburry, his executors, administrators and assigns, in the penal sum in each bond of seventeen hundred and fifty pounds current money, with a condition under each bond written for the payment of eight hundred and seventy-five pounds current money, the first bond payable on or before the first day of April in the year eighteen hundred and fourteen, the second the first of April, eighteen hundred and fifteen, and the third the day and year following, as by the said bonds or obligations and conditions may more fully appear. Now this Indenture witnesseth, that the said Willoughby Mayburry in consideration of the said debt or sum of money owing to the said Thomas Mayburry as aforesaid, and for the better securing the payment thereof, to the said Thomas, his executors, administrators or assigns, according to the conditions of the said bonds, and also in consideration of the further sum of one dollar to him the said Willoughby Mayburry by the said Thomas Mayburry in hand paid at or before the sealing and delivering of these presents, the receipt whereof the said Willoughby doth hereby acknowledge, hath granted, bargained, sold, released, and confirmed and by these presents doth grant, bargain, sell, release and confirm unto the said Thomas Mayburry and to his heirs and assigns "Catoctin Furnace," and those tracts of land attached to the same iron works situate, lying and being in the county aforesaid, being the said furnace and lands sold and conveyed to the said Willoughby and Thomas by Catherine Johnson, Baker Johnson and William Ross, executors of Col. Baker Johnson, as fully as the same has been conveyed to the said Willoughby and Thomas by the executors aforesaid, as by reference to that deed, may more fully and at large appear; to have and to hold the said furnace and all the tracts of land attached thereto with the appurtenances thereunto belonging, unto the said Thomas Mayburry, his heirs and assigns to the only proper use and behoof of the said Thomas Mayburry his heirs and assigns for ever, and to and for no other use, intent or purpose whatever; provided always, and it is the true intent and meaning of these presents, and of the said parties hereunto, that if the said Willoughby, his heirs, executors or administrators, do and shall well and truly pay or cause to be paid unto the said Thomas, his executors, administrators or assigns, the said several sums of eight hundred and seventy-five pounds, according to the conditions of the above in part recited bonds or obligations, without any deduction or abatement whatsoever, then and from thenceforth these presents and every matter and thing herein contained shall cease and be utterly null and void, any thing herein contained to the contrary thereof in any wise notwithstanding; and lastly, it is covenanted and agreed upon, between both the said parties, that until default shall be made in payment of the said several sums of money, according to the times above limited for the payment thereof, it shall be lawful for the said Willoughby, his heirs and assigns, peaceably and quietly to possess and enjoy all and singular the premises above granted with the appurtenances, and to have and to take the rents, issues and profits

thereof, to his and their own particular use and benefit, any thing herein contained to the contrary thereof, notwithstanding.

In witness whereof, the parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of THOMAS B JONES, GEORGE KOLB. } WILLOUGHBY MAYBURRY. [SEAL.]

STATE OF MARYLAND, *Frederick County*, ss.

Be it remembered, that on this tenth day of March in the year of our Lord eighteen hundred and thirteen, personally appears Willoughby Mayburry the party within named, before us the subscribers, two Justices of the Peace in and for the county aforesaid, and acknowledged the within deed of mortgage to be his act and deed, and the furnace and lands and premises therein mentioned to be the right and estate of the within named Thomas Mayburry party grantee or mortgagee also therein named, his heirs and assigns for ever, according to the purport, true intent and meaning of the said deed of mortgage, and the acts of Assembly in such case made and provided. Taken and certified the day and year above written.

THOMAS B. JONES,
GEORGE KOLB.

I do hereby assign the within mortgage to William Weaver, for value received.

THOMAS MAYBURRY.

Frederick County, Md. ss.

I hereby certify that the foregoing is a true copy taken from Liber W. R. No. 44, Folios 725, 726, and 727, one of the Land Records of Frederick County.

In testimony whereof I have hereunto set my hand and official seal of office this 12th April, 1832. [SEAL.]

JOHN SCHLEY, *Clerk.*

(*Exhibit No. 5—filed with the answer.*)

STATE OF MARYLAND, *Frederick County*, to wit:

At a county court, sitting as a court of Equity, begun and held at the court-house in Frederick Town, in and for said county, on the first Monday of March, in the year of our Lord one thousand eight hundred and twenty,

Present the Honourable JOHN BUCHANAN, Esquire, Chief Judge, ABRAHAM SHRIVER and THOMAS BUCHANAN,

Esquires, Associate Judges, WILLIAM M. BEALE, Esquire, Sheriff, and JOHN SCHLEY, Clerk.

In the record of proceedings of the same Court, amongst others are the following, to wit:

To the Honourable the Judges of Frederick County Court, sitting as a Court of Equity. The Bill of Complaint of Baker Johnson and William Ross of Frederick County, most respectfully showeth. That on the nineteenth day of March, eighteen hundred and twelve, Willoughby Mayburry and Thomas Mayburry were indebted to these complainants in the sum of ten thousand five hundred pounds, and for the purpose of securing the payment of the same, executed to these complainants and Catherine Johnson, their five joint and several bonds, two of which they paid and all of the third bond with the exception of four hundred and sixty-four dollars and eighty-nine cents, for which the said Willoughby executed his said promissory note herewith exhibited, marked No. 1, the two last bonds are also still unpaid, one of two thousand pounds, the other of two thousand five hundred pounds herewith also exhibited, marked No. 2 and 3, and also executed the deed of Mortgage herewith exhibited marked No. 4, to secure all the five bonds, to which said note and bonds and mortgage these complainants refer and pray that the same may be taken as a part of this their bill. These complainants further state, that the said Thomas Mayburry has sold and conveyed to the said Willoughby all his right and title to the same mentioned in the said mortgage, as will fully appear by exhibit marked No. 5, and that the said Willoughby Mayburry now holds the same in his absolute and special capacity, and not as joint tenant or tenant in common with the said Thomas Mayburry. These complainants further state that the said Willoughby Mayburry as in full possession of the premises in the said deed of mortgage mentioned, to the end therefore that the said Mortgage may be foreclosed and the land thereby conveyed to these complainants be sold by the decree of this honourable Court in order to satisfy the debt so as aforesaid due to them, and that they may obtain such other and further reliefs in the premises as the nature of their case may require, may it please your Honours to grant to your complainants, a writ of subpœna in the usual form commanding the said Willoughby Mayburry to be and appear in this Court as a Court of Equity to answer the premises aforesaid, and abide by such order and decree therein as to this honourable Court may seem right and so forth.

WILLIAM ROSS,
For the Complainants.

Exhibit No. 1. Referred to in the within and foregoing Bill of Complaint contained in the following words, to wit:

$464,89. Frederick County, November 19th, 1818.

Sixty days after date, I promise to pay to the order of William Ross, Esquire, at the Branch Bank at Frederick Town, four hun-

dred, sixty-four dollars, eighty-nine cents for value received with interest from the date hereof.

WILLOUGHBY MAYBURRY.

(*Exhibit No.* 2.)

Know all men by these presents, that we, Willoughby Mayburry and Thomas Mayburry of the City of Philadelphia, and each of us are held and firmly bound unto Catherine Johnson, Baker Johnson and William Ross of the County of Frederick, in the full and just sum of four thousand pounds current money of the State of Maryland, to be paid unto the said Catherine Baker and William, or to their certain attorney, executors, administrators or assigns to which payment well and truly to be made and done, we bind ourselves, our heirs, executors, and administrators and each and every of us and them firmly by these presents, sealed with our seals, and dated this nineteenth day of March, Anno Domini one thousand eight hundred and twelve. The condition of the above obligation is such, that if the above bounden Willoughby Mayburry and Thomas Mayburry, or either of them do and shall well and truly pay or cause to be paid unto the said Catherine Johnson, Baker Johnson, and William Ross, or to their certain Attorney, Executors, Administrators or Assigns, the just and full sum of two thousand pounds lawful money of the State of Maryland, with interest, when due at or upon the first day of April, eighteen hundred and sixteen, then the above obligation to be void, else to remain in full force and virtue in law.

Signed, sealed and delivered in the presence of
THOMAS B. JONES,
PETER BURKHART.

WILL'Y. MAYBURRY. [SEAL.]
THOMAS MAYBURRY. [SEAL.]

N. B. It is understood that interest is not to commence on this Bond until 1st April, 1816.

ROSS W. and T. MAYBURRY.

(*Exhibit No.* 3.)

Know all men by these presents, that we, Willoughby Mayburry and Thomas Mayburry, of the City of Philadelphia, and each of us, are held and firmly bound unto Catherine Johnson, Baker Johnson, and William Ross of Frederick County, in the full and just sum of five thousand pounds current money of the State of Maryland, to be paid unto the said Catherine Baker and William, or to their certain Attorney, Executors, Administrators or Assigns, to which payment well and truly to be made and done, we bind ourselves, our Heirs, Executors, and Administrators, and each and every of us and them firmly by these presents, sealed with our seals, and dated this nineteenth day of March, Anno Domini one thousand eight hundred and twelve. The condition of the above obligation is such, that if the above bounden Willoughby Mayburry and

Thomas Mayburry or either of them, do and shall, well and truly pay or cause to be paid unto the said Catherine Johnson, Baker Johnson and William Ross, or their certain attorney, executors, administrators, or assigns, the just and full sum of two thousand, five hundred pounds lawful money of the State of Maryland with interest when due at or upon the first day of April, eighteen hundred and seventeen. Then the above obligation to be void, else to remain in full force and virtue in law.

Signed, sealed and delivered in the presence of THOMAS B. JONES, PETER BURKHART. } WILL'Y. MAYBURRY. [SEAL.] THOMAS MAYBURRY. [SEAL.]

N. B. It is understood that this Bond is not to bear Interest until the 1st of April, 1819.

ROSS W. and T. MAYBURRY.

(*Exhibit No.* 4.)

This Indenture, made this nineteenth day of March, in the year of our Lord one thousand eight hundred and twelve, between Willoughby Mayburry and Thomas Mayburry of the City of Philadelphia, of the one part, and Catherine Johnson, Baker Johnson and William Ross of Frederick County and State of Maryland, of the other part: Whereas, the said Willoughby Mayburry and Thomas Mayburry by their five several Bonds duly executed, bearing date the nineteenth day of March, in the year aforesaid, stand bound unto the said Catherine Johnson, Baker Johnson and William Ross, their executors, administrators and assigns, in the penal sum of twenty-five thousand pounds current money, with a condition under the first four Bonds for the payment of two thousand pounds each, current money, the fifth Bond with a condition thereunder written for the payment of two thousand five hundred pounds, the Bonds are payable yearly, to wit: the first Bond payable the first of April eighteen hundred and thirteen, and so on yearly until the whole are paid with legal interest for the same from the time they severally become due, as by the said Bonds and conditions may more fully appear. Now this Indenture witnesseth, that the said Willoughby and Thomas Mayburry in consideration of the said debt or sum of twenty-five thousand pounds, owing to the said Catherine, Baker and William as aforesaid, and for the better securing the payment thereof with Interest to the said Catherine, Baker and William, their heirs, executors, administrators or assigns, according to the condition of the said Bonds, and also in consideration of the further sum of one dollar to them in hand paid by the said Catherine, Baker and William before the ensealing and delivery of these presents, the receipt whereof the said Willoughby and Thomas do hereby acknowledge, have granted, bargained, sold, released and confirmed, and by these presents do grant, bargain, sell, release and confirm unto the said Catherine,

Baker and William, and to their heirs and assigns, the Iron Furnace called "Catoctin," and all the lands attached thereto, situate in Frederick County, as fully and to the same extent as we hold and are entitled to the same, in pursuance of Deed of Conveyance made to us by the said Catherine, Baker and William, bearing date the fifth day of March, eighteen hundred and twelve, to have and to hold the said Iron Furnace and the lands aforesaid, with the appurtenances, unto the said Catherine, Baker and William, their heirs and assigns, to the only proper use of the said Catherine, Baker and William, their heirs and assigns for ever, and to and for no other use, intent or purpose whatsoever; provided always, and it is the true intent and meaning of these presents, and of the said parties hereunto, that if the said Willoughby and Thomas, their heirs, executors or administrators do and shall well and truly pay or cause to be paid unto the said Catherine, Baker and William, their executors, administrators or assigns, the sum of twelve thousand five hundred pounds, being the real sum with legal Interest for the same, according to the condition of the above in part recited Bonds, without any deduction or abatement whatsoever, then and from thenceforth these presents shall cease and be void, any thing herein contained to the contrary thereof notwithstanding, and the said Willoughby and Thomas for themselves, their heirs, executors and administrators do covenant and agree to and with the said Catherine, Baker and William, their executors, administrators and assigns in manner and form following, that is to say, that they, the said Willoughby and Thomas, their heirs, executors or administrators shall and will well and truly pay or cause to be paid unto the said Catherine, Baker or William, their executors, administrators or assigns, the said sum of twelve thousand five hundred pounds, with legal interest as aforesaid on the days herein before limited for payment thereof without any abatement whatsoever as aforesaid, and that the said granted and released premises now are, and at all times from and after default shall happen to be made of or in payment of the said sum of twelve thousand five hundred pounds and Interest as aforesaid, of the said sum of twelve thousand five hundred pounds and Interest as aforesaid, or any part thereof shall for ever be, remain and continue free and clear from all manner of former and other gifts, grants, bargains, sales, mortgages, judgments, charges or incumbrances whatsoever heretofore made, done or suffered by them the said Willoughby and Thomas, and that the said Catherine, Baker and William, their heirs and assigns, shall and may from time to time and at all times after any such default shall happen to be made in the payment of the said sum of twelve thousand five hundred pounds, and Interest as aforesaid, or any part thereof, peaceably and quietly have, hold, possess and enjoy, all and singular the said premises, without the let, interruption or disturbance of them the said Willoughby and Thomas, their heirs or assigns, or of any person or persons lawfully claiming, or to claim by, from or under them or any of them; and lastly it is agreed by and between both parties, that until default of payment as aforesaid is made, that the said

Willoughby and Thomas are to continue in full possession of the premises aforesaid, enjoying all the rents and profits thereof to their own particular use and benefit, any thing herein contained to the contrary thereof in any wise notwithstanding.

In witness whereof the parties have hereunto set their hands and seals, the day and year first above written.

Witness present,
THOMAS B. JONES,
PETER BURKHART.

WILL'Y. MAYBURRY. [SEAL.]
THOMAS MAYBURRY. [SEAL.]

STATE OF MARYLAND, *Frederick County*, ss.

Be it remembered, that on this nineteenth day of March, eighteen hundred and twelve, personally appears Willoughby Mayburry and Thomas Mayburry, the parties within mentioned before us, the subscribers, two Justices of the Peace in and for said county, and acknowledges the above instrument of writing to be their act and deed, and the furnace, the lands and the premises therein mentioned and thereby mortgaged, to be the right and estate of the within and above named Catherine Johnson, Baker Johnson, and William Ross, their heirs and assigns for ever, according to the purport, true intent and meaning of the said instrument of writing, and the acts of Assembly in such case made and provided.

Taken and certified the day and year above written, before

THOMAS B. JONES,
PETER BURKHART.

(*Exhibit No.* 5.)

This Indenture, made this ninth day of March, in the year of our Lord one thousand eight hundred and thirteen, between Thomas Mayburry, of Frederick County and State of Maryland of the one part, and Willoughby Mayburry, of the County and State aforesaid, of the other part, witnesseth, that the said Thomas Mayburry for and in consideration of the sum of twenty thousand dollars, current money of the United States to him in hand paid by the said Willoughby Mayburry, before the ensealing and delivery of these presents, the receipt whereof he the said Thomas Mayburry doth hereby acknowledge, and from every part and parcel thereof doth hereby acquit, exonerate and discharge the said Willoughby Mayburry, his heirs, executors and administrators, he the said Thomas Mayburry hath granted, bargained, sold, aliened, enfeoffed and confirmed, and by these presents doth grant, bargain, sell, alien, enfeoff and confirm unto the said Willoughby Mayburry, his heirs and assigns, all his own full, equal, undivided moiety or half part of the Iron Furnace called Catoctin, and his equal undivided moiety or half part of all the following tracts of land and parts of tracts of land, situate, lying and being in the county and state aforesaid, to wit: "Good Will," "Stoney Park," "Wood Land," "Poplar Bottom,"

all that part of the Mountain Land, all that part of the first Dividend, sold and conveyed to the said Thomas and Willoughby by the Executors of Col. Baker Johnson, and all the land included within the lines run by the executors aforesaid, and the land divided with or purchased of William Bayly by the Executors aforesaid, and all my equal undivided moiety or half part of the Furnace and lands attached thereto, as fully as the same was conveyed to us the said Thomas and Willoughby by the Executors of Col. Baker Johnson as by reference to the same deed will more fully and at large appear, and all my right to any ore on the lands of Henry Frailey, or on the lands of the late Col. James Johnson, deceased, together with all and singular the buildings, improvements, woods, ways, waters and water courses, hereditaments and appurtenances whatsoever thereunto belonging or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof, and all the estate, right, title and interest whatsoever of him the said Thomas Mayburry, both at Law and in Equity of, in, to and out of the said Furnace and lands attached thereto and premises hereby bargained and sold, or meant hereby so to be and every or any part and parcel thereof, to have and to hold the said one full equal undivided moiety or half part of the Furnace, together with the buildings and appurtenances, and all and singular other the premises hereby bargained and sold, or meant hereby so to be, with their and every of their appurtenances unto the said Willoughby Mayburry, his heirs and assigns for ever, and to and for no other use, intent or purpose whatsoever, and the said Thomas Mayburry for himself, his heirs, executors and administrators doth hereby covenant and agree to and with the said Willoughby Mayburry and his heirs, executors, administrators or assigns, that he the said Thomas Mayburry and his heirs, the said Furnace and tracts of land and premises hereby granted to him the said Willoughby Mayburry his heirs and assigns, against him the said Thomas Mayburry and his heirs, and against all and every person or persons whatsoever claiming or to claim any right or title by, from or through him or them, shall and will hereafter warrant and for ever defend by these presents.

In witness whereof, the said Thomas Mayburry hath hereunto subscribed his name and affixed his seal the day and year herein before written.

Signed, sealed and delivered in the presence of us, THOMAS B. JONES, GEORGE KOLB. } THOMAS MAYBURRY. [SEAL.]

Received on the day of the date of the within deed from the within named Willoughby Mayburry, the sum of twenty thousand dollars, being the consideration money in the said deed.

Witness present, GEORGE KOLB. } THOMAS MAYBURRY. [SEAL.]

STATE OF MARYLAND, *Frederick County*, ss.

Be it remembered, that on this tenth day of March, in the year eighteen hundred and thirteen, personally appears Thomas Maybury, the party grantor within named, before us the subscribers two Justices of the Peace in and for the county aforesaid, and acknowledges the within deed or instrument of writing to be his act and deed, and the Furnace and the lands therein mentioned to be the right and estate of the within named Willoughby Mayburry party grantee, also therein named, his heirs and assigns for ever, according to the true intent of the said deed and the acts of Assembly, in such case made and provided.

Taken and certified the day and year above written.

THOMAS B. JONES.
GEORGE KOLB.

Whereupon the answer of Willoughby Mayburry was filed in the words and of the tenor following, to wit.

To the Honourable the Judges of Frederick County Court sitting as a Court of Equity. The answer of Willoughby Mayburry to the Bill of Complaint of Baker Johnson and William Ross, filed in Frederick County Court, against the said respondent. This defendant admits all the facts stated in the said Bill of Complaint, and that he owns and holds the premises mentioned in the said Bill in his separate right, and free from any tenancy in common with his brother Thomas Mayburry. This defendant further states that he has no objection, and hereby agrees to the Court, hoping such decree for the sale of the said premises and upon such terms as they may think proper, the surplus of the proceeds of the sale to be applied to the discharge of any other sums that may on the premises aforesaid, all of which this defendant is ready to verify when and in whatever way this Honourable Court may direct.

WILLOUGHBY MAYBURRY.

STATE OF MARYLAND, *Frederick County*, ss.

On this 24th day of March, eighteen hundred and twenty, Willoughby Mayburry, the defendant named in the above answer, personally appeared before the subscriber one of the Justices of the Peace in and for the county aforesaid, and made oath on the Holy Evangely of Almighty God that the facts in the said answer stated are true to the best of his knowledge, recollection and belief.

Sworn before me,

JOHN H. McELFRESH.

Whereupon the Court passed the following decree in the words and of the tenor following, to wit:

BAKER JOHNSON AND WILLIAM ROSS, *against* WILLOUGHBY MAYBURRY. } In Frederick County Court sitting as a Court of Equity.

The said cause standing ready for hearing and being submitted, the Bill, Answer, Exhibits and all other proceedings were by the Court read and considered. It is thereupon this 25th day of March, eighteen hundred and twenty, by the Judges of Frederick County Court, sitting as a Court of Equity, adjudged, ordered and decreed that the mortgaged property in the proceedings mentioned shall be sold. That Daniel Krug be and he is hereby appointed Trustee for making the said sale, and that the course and manner of his proceedings shall be as follows. He shall first file with the Clerk of this Court a Bond to the State of Maryland executed by himself and a surety or sureties approved by this Court in the penalty of forty thousand dollars conditioned for the faithful performance of the Trust reposed in him by this decree or any of other decree or order in the premises, he shall then proceed to make sale of the mortgaged property, having first given three weeks' public notice inserted in such newspaper or papers as he may think proper of the time, place, manner and terms of sale, which shall be, one-third of the purchase money shall be paid in hand, and the residue in two equal annual payments without interest, and on the ratification of the sale by this Court and on payment of the whole purchase money, and not before, the Trustee shall, by a good and sufficient deed to be executed, acknowledged and recorded agreeably to law, convey to the purchaser or purchasers and his, her, and their heirs the property purchased by him, her, or them clear and discharged from all claim of the Complainants, or of the Defendant or those claiming by, from or under them or any of them, and as soon as conveniently may be, after the sale, the Trustee shall return to this Court a full and particular account of his proceedings relative to said sale, with an affidavit of the truth thereof and of the fairness of the sale thereunto annexed, and shall bring into this Court the money arising from the said sale to be applied under the direction of this Court according to the rights of the parties interested in the same, after deducting the costs of this suit, and such commissions to the Trustee as this Court shall think proper to allow in consideration of the skill, attention and fidelity wherewith he shall appear to have discharged his Trust.

JNO. BUCHANAN,
ABM. SHRIVER,
THOS. BUCHANAN.

Whereupon the Trustee filed the following Bond, endorsed "Approved, John Buchanan," to wit:

Know all men by these presents, that we, Daniel Krug, John Mantz and John Markell, of Frederick County, are held and firmly bound unto the State of Maryland in the full and just sum of forty thousand dollars, to be paid to the said State or its certain Attorney, to which payment well and truly to be made and done, we bind ourselves and each and every of us, our and each of our Heirs, Executors and Administrators, jointly and severally firmly by these presents, sealed with our seals and dated this 25th day of

March, A. D. 1820, Whereas Daniel Krug, by a Decree of the County Court of Frederick, setting as a Court of Equity, has been appointed Trustee to sell the mortgaged property mentioned in the said Decree, Now the condition of the above obligation is such that if the above bounden Daniel Krug do and shall well and faithfully perform the Trust reposed in him as Trustee aforesaid by the said Decree, or that may be reposed in him by any future Decree or Order in the premises, then the above obligation to be void, otherwise to be and remain in full force and virtue in Law.

Signed, sealed and delivered in presence of JACOB MARKELL. — DANIEL KRUG. [SEAL.] JOHN MANTZ. [SEAL.] JOHN MARKELL. [SEAL.]

Whereupon the Trustee filed the following Report in the words, and of the tenor following, to wit:

To the Honourable the Judges of Frederick County Court sitting as a Court of Equity, Daniel Krug, the Trustee appointed by your Honours to see the property mortgaged by Willoughby and Thomas Mayburry to the Executors of Col. Baker Johnson, reports, that after having filed his bond in compliance with the Decree, he advertised the property decreed to be sold, a copy of which advertisement marked No. 1, is herewith exhibited as a part of this his report. That at the time and place mentioned in said notice of sale, the Trustee attended and sold the property at public sale to John Brien, Esquire, who was the highest bidder and became the purchaser at the sum and for the price of twenty-seven thousand five hundred and five dollars current money, the payment of which is secured to the Trustee according to the terms of sale as Decreed. The Trustee therefore prays that the said sale may be ratified and confirmed.

DANIEL KRUG.

On this 3d day of May, 1820, the above named Daniel Krug made oath, before me, the subscriber, a Justice of the Peace for Frederick County, that the several matters stated in the above report are true as they stand stated.

Sworn before JNO. H. McELFRESH.

Whereupon the Court passed the following order of publication, in the words and of the tenor following, to wit:

Ordered, that the sale made by Daniel Krug, Trustee for the sale of the Catoctin Iron Works, mortgaged by Willoughby and Thomas Mayburry to the Executors of Col. Baker Johnson, shall be ratified and confirmed unless cause to the contrary be shown before the 25th day of May next, provided a copy of this order be inserted three successive weeks in one of the newspapers of Frederick before the 25th day of May next. The report states the amount of the sale to be twenty-seven thousand five hundred and five dollars.

ABM. SHRIVER.

May 3d, 1820.

Whereupon the following certificate of the Printer, together with a printed copy of the above order thereto annexed, was filed in the words and of the tenor following, to wit:

I hereby certify that the annexed order was inserted for three successive weeks in the Star of Federalism, before the 25th instant.
For Charles Sower, THOS. GLISAN, May 29th, 1820.

Whereupon the following Petition of John Brien was filed in the words and of the tenor following, to wit:

To the Honourable Judges of Frederick County Court, sitting as a Court of Chancery.

The Petition of John Brien of Frederick County respectfully showeth, that at the sale of certain Lands and Iron Works, the property of Willoughby Mayburry lately made, under and by virtue of a Decree of this Honourable Court, by Daniel Krug who was the Trustee appointed by the Court for that purpose, your Petitioner was the highest bidder and became the Purchaser for the sum of twenty-seven thousand five hundred and five dollars, and hath executed his bonds to the said Trustee for the purchase money according to the terms of the Decree, and the Trustee hath reported the said sale for the ratification of the Court, your Petitioner states that at the time he bid for the said property, and at the time he executed his bonds as aforesaid, he believed that the Trustee was selling the same free from all incumbrance whatsoever, that the Trustee gave no notice of any incumbrance thereon, and your Petitioner states that he would not have bid the above sum for the same if he had known that it would in his hands be subjected to any right or claim of Dower on the part of Mrs. Mayburry, the wife of the said Willoughby Mayburry: your Petitioner states that the property in question was conveyed to Thomas and Willoughby Mayburry in fee simple as Joint Tenants, March 5th, 1812, that it was mortgaged by them to William Ross, Esquire, and others, to secure the payment of a large sum of money, by Deed dated March 19th, 1812, on which said Mortgage there is now due about $15,000, that afterwards Thomas Mayburry sold all his interest in the said property to Willoughby Mayburry, and conveyed the same to him by Deed dated March 9th, 1813, and the said Willoughby afterwards on the 9th day of March in the year 1813, mortgaged the said Land to the said Thomas Mayburry as will more fully appear by the said Deeds and Mortgages now on record among the Land Records of Frederick County, a copy of the last mentioned Mortgage is herewith filed marked No. 1. At the time of the first Deed herein before mentioned, Willoughby Mayburry was a married man, and his said wife is still in full life, and since the execution of his said Bonds your Petitioner hath learned that she did not acknowledge any of the Deeds of Mortgage herein before mentioned to have been made by her said husband, nor hath in any other manner relinquished any right of Dower

at Law or in Equity, which she may at any time have acquired in the said Lands or any part thereof; And your Petitioner is advised that by virtue of the conveyances above mentioned she is by the Laws of this State entitled to a right of Dower in the said Lands and Premises or some part thereof, your Petitioner further states that he is perfectly willing to fulfil the contract made as aforesaid with the Trustee, and has offered so to do if the parties interested in the sale with power from Mrs. Mayburry a relinquishment of her right of Dower in the said Land, But this has not been done, and your Petitioner has no reason to believe that it will be done, in as much therefore as your Petitioner became the purchaser of the said Land under the circumstances herein before mentioned, and the Trustee is unable to convey to him the Land free from incumbrance, and it would be contrary to Equity as he humbly conceives to compel him to execute the contract on his part when it cannot be fully executed by the Trustee, he therefore prays that the sale made by the Trustee may not be ratified, and that the Bonds heretofore executed by him may be delivered up to be cancelled, and that he may obtain also such other and further relief in the premises as this Honourable Court may seem right and so forth.

R. B. TANEY,
For Petitioner.

FREDERICK COUNTY, *to wit:*

John Brien, the petitioner in this case, makes oath that the facts stated in the aforegoing petition are true as therein stated to the best of his knowledge, and further, that this deponent is informed and believes, that the mortgage of Willoughby Mayburry to Thomas Mayburry hath been assigned to William Weaver, who claims the sum of nine thousand one hundred and sixty dollars, or thereabouts, to be due now on the said mortgage. But this deponent is informed and believes that Willoughby Mayburry denies that any thing is due on the said mortgage, alleging that the same was given to indemnify the said Thomas Mayburry against their joint bonds given to William Ross and others for the original purchase money; the deponent further states, that the land bought by him was also subject to the payment of the sums of money mentioned in the copies of the mortgages, and short copies of judgments herewith exhibited marked No. 2, 3, 4, and 5; and the deponent is informed and believes, that the several sums of money mentioned in the said mortgages and judgments are due and unpaid. Sworn before me, this 29th May, 1820.

J. H. McELFRESH.

Exhibit No. 1, referred to in the aforegoing petition, contained in the following words, to wit:

This Indenture, made this ninth day of March, in the year eighteen hundred and thirteen, between Willoughby Mayburry, of Frede-

rick county, and State of Maryland, of the one part, and Thomas Mayburry, of the county and state aforesaid, of the other part, whereas the said Willoughby by his three several obligations duly executed, bearing date the ninth of March in the year aforesaid, stands bound unto the said Thomas Mayburry, his executors, administrators and assigns, in the penal sum in each bond of seventeen hundred and fifty pounds current money, with a consideration under each bond written for the payment of eight hundred and seventy-five pounds current money, the first bond payable on or before the first day of April, in the year eighteen hundred and fourteen, the second the first of April, 1815, and the third the day and year following, as by the said bonds or obligations and conditions may more fully appear: Now this indenture witnesseth, that the said Willoughby Mayburry, in consideration of the said debt or sum of money owing to the said Thomas Mayburry as aforesaid, and for the better securing the payment thereof to the said Thomas, his executors, administrators or assigns, according to the conditions of the said bonds, and also in consideration of the further sum of one dollar to him, the said Willoughby Mayburry, by the said Thomas Mayburry in hand paid, at or before the sealing and delivery of these presents, the receipt whereof the said Willoughby doth hereby acknowledge, hath granted, bargained, sold, released and confirmed, and by these presents doth grant, bargain, sell, release and confirm unto the said Thomas Mayburry, and to his heirs and assigns "Catoctin Furnace," and those tracts of land attached to the same iron works, situate, lying and being in the county aforesaid, being the same furnace and lands sold and conveyed to the said Willoughby and Thomas by Catherine Johnson, Baker Johnson, and William Ross, executors of Colonel Baker Johnson, as fully as the same has been conveyed to the said Willoughby and Thomas by the executors aforesaid, as by reference to that deed may more fully and at large appear: To have and to hold the said Furnace and all the tracts of land attached thereto, with the appurtenances thereunto belonging, unto the said Thomas Mayburry, his heirs and assigns, to the only proper use and behoof of the said Thomas Mayburry, his heirs and assigns for ever, and to and for no other use, intent or purpose whatsoever. Provided always, and it is the true intent and meaning of these presents, and of the said parties hereunto, that if the said Willoughby, his heirs, executors or administrators, do and shall well and truly pay or cause to be paid unto the said Thomas, his heirs, executors, administrators or assigns, the said several sums of eight hundred and seventy-five pounds, according to the conditions of the above in part recited bonds or obligations, without any deduction or abatement whatsoever, then and from thenceforth these presents, and every matter and thing herein contained, shall cease and be utterly null and void, any thing herein contained to the contrary thereof, in any wise notwithstanding, and lastly, it is covenanted and agreed upon between both the said parties, that until default shall be made in payment of the said several sums of money, according to the times above limited for

the payment thereof, it shall be lawful for the said Willoughby, his heirs and assigns, peaceably and quietly to possess and enjoy all and singular the premises above granted with the appurtenances, and to have and to take the rents, issues and profits thereof, to his and their own particular use and benefit, any thing herein contained to the contrary thereof notwithstanding. In witness whereof the parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered, in the presence of
GEORGE KOLB,
THOMAS B. JONES.

WILL'Y. MAYBURRY. [SEAL.]

STATE OF MARYLAND, *Frederick County*, ss.

Be it remembered, that on this 10th day of March, in the year of our Lord, 1813, personally appears Willoughby Mayburry the party within named before us the subscribers, two justices of the peace in and for the county aforesaid, and acknowledges the within Deed of Mortgage to be his act and deed, and the Furnace and lands and premises therein mentioned to be the right and estate of the within named Thomas Mayburry party grantee or mortgagee also therein named, his heirs and assigns for ever, according to the purport, true intent and meaning of the said Deed of Mortgage, and the acts of Assembly in such case made and provided. Taken and certified the day and year above written.

THOMAS B. JONES.
GEORGE KOLB.

MARYLAND, *Frederick county*, ss.

In testimony that the within is a true copy taken from Liber W. R. No. 44, Folios 726 and 727, one of the land records of Frederick county,

I hereunto set my name and affix the seal of Frederick County Court, this 29th day of May, 1820. [SEAL.]

JOHN SCHLEY, *Clerk.*

Exhibit No. 2, Referred to in the within petition contained in the following words, to wit:

This Indenture, made this fifteenth day of October, in the year of our Lord one thousand eight hundred and nineteen, between Willoughby Mayburry, of Frederick County and State of Maryland of the one part, and Jeremiah W. Mayburry, of the Northern Liberties in the City of Philadelphia, and State of Pennsylvania of the other part, Whereas the said Willoughby Mayburry, by his bond or obligation duly executed, bearing date with these presents, stands bound unto the said Jeremiah W. Mayburry, his executors, administrators and assigns, in the sum of eight thousand dollars current money, with a condition thereunder written for the payment of four thousand dollars current money, with legal interest for the same on or before the

first day of April next, ensuing the date of these presents as by the said bond and condition may more fully appear; Now this Indenture witnesseth, that the said Willoughby Mayburry in consideration of the said debt or sum of eight thousand dollars owing to the said Jeremiah W. Mayburry, as aforesaid, and for the better securing the payment thereof with interest to the said Jeremiah W. Mayburry, his executors, administrators or assigns, according to the condition of the said bond, and also in consideration of the further sum of one dollar, current money to him in hand paid before the sealing and delivery of these presents, the receipt whereof he the said Willoughby Mayburry doth hereby acknowledge, hath granted, bargained, sold, released and confirmed unto the said Jeremiah W. Mayburry, and to his heirs and assigns, all the Iron Furnace called "Catoctin," and all the lands attached thereto, situate in Frederick County, as fully, and to the same extent as the same are held by the said Willoughby Mayburry by the Deed of Catherine Johnson, Baker Johnson, and William Ross, Executors of the last will and testament of Col. Baker Johnson, deceased, to Thomas Mayburry, and the said Willoughby Mayburry, bearing date the fifth day of March, in the year of our Lord eighteen hundred and twelve. To have and to hold the said Iron Furnace, called Catoctin, and the land attached thereto, and every part and parcel thereof with the appurtenances thereunto belonging, unto the said Jeremiah W. Mayburry, his heirs and assigns, and to and for no other use, intent or purpose whatsoever; Provided always, and it is the true intent and meaning of these presents, and of the parties hereunto, that if the said Willoughby Mayburry, his heirs, executors or administrators do and shall well and truly pay or cause to be paid, unto the said Jeremiah W. Mayburry, his executors, administrators or assigns, the said full sum of four thousand dollars, current money, with legal interest for the same, on or before the first day of April next, ensuing the day of the date of these presents, according to the condition of the above in part recited bond or obligation, without any deduction or abatement whatsoever, then and from thenceforth these presents and every matter and thing therein contained shall cease and be utterly null and void, any thing herein contained to the contrary thereof in any wise notwithstanding; and the said Jeremiah W. Mayburry by a good and sufficient release of Mortgage duly executed, acknowledged and recorded, shall release and re-convey to the said Willoughby Mayburry his heirs and assigns, all the aforementioned Iron Furnace and Lands herein before mentioned and conveyed, and the said Willoughby Mayburry, for himself and his heirs, doth covenant, promise, grant and agree to and with the said Jeremiah W. Mayburry his heirs and assigns, that he the said Willoughby Mayburry his heirs or some of them, shall and will well and truly pay or cause to be paid unto the said Jeremiah W. Mayburry his heirs or assigns, the said sum of four thousand dollars current money, with legal interest as aforesaid, on the day herein before limited for payment thereof, without any deduction or abatement whatsoever as aforesaid, and that the said granted and released premises, at all times after default shall happen to be made of or in pay-

ment of the said sum of four thousand dollars and interest as aforesaid or any part thereof, shall for ever be, remain and continue free and clear, of and from all incumbrances whatsoever heretofore made, committed, done, suffered, by the said Willoughby Mayburry, and that he, the said Jeremiah W. Mayburry, his heirs and assigns, shall and may from time to time and at all times after any such default shall happen to be made, peaceably and quietly have, hold, occupy, possess and enjoy all and singular the said premises, with the appurtenances and every part and parcel thereof without the let, hindrance or disturbance of him the said Willoughby Mayburry, his heirs or assigns or any other person claiming or to claim, by, from, or under him, them or any of them, and further that he, the said Willoughby Mayburry, his heirs and assigns, and every other person lawfully claiming any interest in the hereby granted premises or any part thereof, shall and will at any time after such default, make and execute all such further assurances in the law for the further and better conveying and assuring of all and singular the premises with the appurtenances, as hereby granted unto him the said Jeremiah W. Mayburry, his heirs and assigns, to the only proper use and behoof of the said Jeremiah W. Mayburry, his heirs and assigns for ever, absolutely freed and discharged of and from the proviso or condition herein before contained and of and from all equity of redemption by virtue or colour thereof, according to the true intent and meaning of these presents, as by the said Jeremiah W. Mayburry, his heirs or assigns or his or their counsel learned in the law shall be reasonably advised, devised or required; And lastly it is covenanted and agreed upon, by and between both the said parties to these presents, and it is hereby declared to be the true intent and meaning hereof, and of the parties hereto, that until default shall be made in payment of the said sum of four thousand dollars, and legal interest for the same as aforesaid according to the time limited for the payment thereof, and shall and may be lawful to and for the said Willoughby Mayburry his heirs and assigns, peaceably and quietly to have and to hold, occupy, possess and enjoy all and singular the said premises above granted and released and every part thereof with the appurtenances, and to have, receive, and take the rents, issues and profits thereof to his and their own particular use and benefit any thing herein contained to the contrary thereof in any wise notwithstanding. In witness whereof, the said Willoughby Mayburry hath hereto subscribed his name and affixed his seal the day and year first herein before written.

Signed, sealed, and delivered in the presence of
THOMAS GIST,
WILLIAM B. HEAD.

WILL'Y. MAYBURRY. [SEAL.]

MARYLAND, *Frederick County*, ss.

Be it remembered, that on this first day of November, in the year 1819, personally appears Willoughby Mayburry mortgagor within named, before the subscribers two Justices of the Peace for said

County, and acknowledges the foregoing mortgage or instrument of writing to be his act and deed for the purposes therein expressed, and the property, iron furnace and land therein described to be the right and estate of Jeremiah W. Mayburry, mortgagee therein named, his heirs and assigns for ever, according to the true intent and meaning of the said mortgage or instrument of writing, and the acts of Assembly in such case made and provided. Acknowledged before

WILLIAM B. HEAD,
THOMAS GIST.

MARYLAND, *Frederick County*, ss.

I hereby certify, that the aforegoing is a true copy taken from Liber I. S. No. 10, Folios 10, &c. one of the Land Records of the county aforesaid.

In testimony whereof I have hereto subscribed my name, and affixed the seal of my office, this 29th day of May, 1820.

[SEAL.]

JOHN SCHLEY,
Clerk Frederick County Court.

Exhibit No. 3. Referred to in the within petition, contained in the words following, to wit:

This Indenture, made this twenty-fourth day of August, eighteen hundred and nineteen, between Willoughby Mayburry of Frederick County and State of Maryland of the one part, and Baker Johnson and John Bayly of the County and State aforesaid, and Rebecca Jolly of the State of Pennsylvania of the other part, Whereas the said Willoughby is justly bound, to the banks in Frederick County in the sum of two thousand seven hundred dollars, for the payment of which, the said Baker and John are bound as indorsers and securities for the same, and the said Willoughby is also justly indebted to the said Rebecca in the sum of two thousand dollars. Now this Indenture witnesseth, that the said Willoughby Mayburry, to secure and indemnify the said Baker and John against the debts due the banks as aforesaid, and for which they are mutually bound with the said Willoughby, and also to secure the payment of the said two thousand dollars to the said Rebecca with the interest due thereon, and also in consideration of the further sum of one dollar to him in hand paid by the said Baker, John and Rebecca, before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, released and confirmed, and by these presents doth grant, bargain, sell, release and confirm unto the said Baker Johnson, John Bayly and Rebecca Jolly, and to their heirs and assigns, all that iron furnace called Catoctin, and all the lands, buildings and improvements attached thereto, situate in Frederick County in the State aforesaid, as fully and to the same extent as the said Willoughby holds the same by a deed of conveyance made to the said Willoughby and Thomas Mayburry by Catherine Johnson, Baker Johnson and William Ross, bearing date the fifth of

March, eighteen hundred and twelve, and recorded in the Land Records of Frederick County, reference being thereunto had will more fully and at large appear, to have and to hold the said furnace and lands aforesaid with the appurtenances, unto the said Baker, and John and Rebecca, their heirs and assigns, to the only proper use of the said Baker, John and Rebecca, their heirs and assigns for ever, provided always, that if the said Willoughby, his heirs, executors or administrators do and shall well and truly pay or cause to be paid unto the banks aforesaid, as unto the said Baker and John, the sum of two thousand seven hundred dollars with all interest accruing thereon or as much of the said debt and interest as may remain unpaid, and shall pay or cause to be paid unto the said Rebecca the sum of two thousand dollars and all interest thereon, then and from thenceforth these presents shall cease and be void, any thing herein contained to the contrary thereof notwithstanding, and lastly, it is agreed that the said Willoughby is to continue in full possession of the premises aforesaid, enjoying all the rents, profits and issues thereof until default of payment as aforesaid is made. In witness whereof the said Willoughby Mayburry has hereunto set his hand and seal the day and year first above written.

Signed, sealed and delivered in the presence of ABM. SHRIVER. } WILLOUGHBY MAYBURRY. [SEAL.]

STATE OF MARYLAND, *Frederick County*, ss.

Be it remembered, that on this 24th day of August, eighteen hundred and nineteen, personally appeared before me the subscriber one of the associate judges of the fifth Judicial District in the State of Maryland, Willoughby Mayburry, the grantor within and above mentioned, and acknowledges the above mortgage or instrument of writing to be his act and deed, and the Furnace, and lands and premises therein mentioned and thereby mortgaged, to be the right and estate of the within named Baker Johnson, John Bayly and Rebecca Jolly, their heirs and assigns for ever, according to the true intent and meaning thereof and the acts of Assembly in such case made and provided. Taken and certified the day and year above written.

ABRAHAM SHRIVER.

I hereby certify that the aforegoing is truly taken from I. S. No. 9, Folios 379 and 380 one of the land records of Frederick County Court.

In witness whereof I hereunto subscribe my name and attach the seal of my office this 29th day of May, 1820. [SEAL.]

JOHN SCHLEY,
Clk. Fredk. County Ct.

Exhibit No. 4. Referred to in the within petition contained in the following words, to wit:

ISAAC BAKER, *v.* WILLOUGHBY MAYBURRY. } No. 628. Originals October Term, 1819. In Frederick County Court. Judgment 1st November, 1819, for 2000$ current money debt, and 1000$ current money damages and costs. Damages to be released on payment of interest from 1st January 1818, till paid. Costs 7$ 33⅓ adl. $1.
Test, JOHN SCHLEY, *Clk.*

ISAAC BAKER, *v.* WILLOUGHBY MAYBURRY. } No. 629. Originals October Term, 1819. In Frederick County Court. Judgment 1st November, 1819, for 3375$ current money debt, and 10,000$ current money damages and costs. Damages to be released on payment of interest from 5th November, 1816, till paid. Costs 7$ 33⅓ adl. 1$.
Test, JOHN SCHLEY, *Clk.*

BENJAMIN RUTHERFORD, *v.* WILLOUGHBY MAYBURRY. } No. 333. Continuances October Term, 1819. In Frederick County Court. Judgment signed 8th November, 1819, for 5000$ current money damages and costs. Damages to be released on payment of 2040$ 10½ current money interest, from 23d February, 1818, till paid, costs 13$ 75 adl. costs 1$. Test. JOHN SCHLEY, *Clk.*

Whereupon the Court passed the following order of ratification, in the words and of the tenor following, to wit:

BAKER JOHNSON AND WILLIAM ROSS, *v.* WILLOUGHBY MAYBURRY. } In Frederick County Court as a Court of Equity, March Term, 1820, ordered by the Court that the objections made by John Brien as stated in his petition filed in this Court to the sale made to him by the trustee in this case be overruled, and that the said sale be ratified and confirmed, the public notice ordered by this Court of the sale appearing to have been given, and no cause to the contrary having been shown except the aforesaid objections, and that the Auditor of this Court having first given three weeks' public notice to those concerned or interested in the said sale or estate, to exhibit their claims properly authenticated, proceed to audit an account in this case, allowance of commissions and expenses hereafter to be made. ABM. SHRIVER.
May 29th, 1820.

Whereupon the Court passed the following order in the words and of the tenor following, to wit:

In the within stated case the Trustee is allowed for his commis-

sions and all expenses, the sum of eight hundred and seventy-seven dollars and ninety cents. ABM. SHRIVER.

July 5th, 1820.

And the said cause so standing continued to July Term, 1820, the Auditor filed the following report in the words and of the following tenor, to wit:

DR. The Estate of WILL'Y. MAYBURRY, in Acct. with DANIEL KRUG, Trustee. CR.

1820, May 2d.			
To the Trustee for his Commission and personal expenses,		$877 90	By am't of sales as per Report Trustee. $27,505 00
To the Attorney for his fee,	$ 3 33⅓		
To the Clerk for his fees,	14 15⅓		
		17 49	
To the Auditor for his fees,		7 00	
To William Ross and Baker Johnson for the Principal sum due them on their Mortgage,	$12,464 89		
Int'st thereon to 2d May, 1820,	2,580 61		
		$15,045 50	
To Thomas Mayburry, the Principal sum due him on his Mortgage,	$ 7000 00		
Interest thereon to 2d May, 1820,	2034 66		
		$ 9,134 66	
To Balance proceeds of sale to be applied as in Ac't. A. marked A. B. and C.		$ 2,422, 45	
		$27,505 00	$27,505 00

Account A.

DR. The Estate of Willoughby Mayburry to William Ross and Baker Johnson, for the amount of their first and cash payment, to be deducted out of the Principal and Interest due them on their Mortgage the 2d May, 1820,	$ 8,265 94
To William Ross and Baker Johnson for amount of Principal and Interest due them on their Mortgage aforesaid 2d May, 1820, and to be paid out of first Instalment,	6,779 56
To Interest thereon from 2d May, 1820, to 2d May, 1821, to be paid out of first Instalment,	406 77
	$15,452 27

Account B.

To Thomas Mayburry, for amount of his first payment out of Balance first instalment, and to be deducted out of the Principal and Interest due him on his Mortgage 2d May, 1821,	$1,982 00
To amount Principal and Interest due 1st May, 1821, after deducting $1982 00 paid out first Instalment,	7,572 66
To Interest on $7,000 00 from 2d May, 1821, to 2d May, 1822,	420 00
	$9,974 66

Account C.

To John Bayly, Baker Johnson, and Rebecca Jolly, for the Balance which will be remaining out of proceeds of sale on 2d May, 1822, to be applied in part payment of the principal sum $4,700 00 due them on their Mortgage,	$1,175 68

BAKER JOHNSON AND WILLIAM ROSS, *v.* WILLOUGHBY MAYBURRY.

In Chancery, in Frederick County Court, July Term, 1820. The Auditor begs leave to report to the Honourable the Judges of Frederick County Court setting as a Court of Chancery, that he has examined the proceedings in this case, and stated an account current between the estate of Willoughby Mayburry and Daniel Krug, the Trustee therein named, in which he has first charged said estate with the Trustee's commissions, costs and expenses of this Court, he has then proceeded to ascertain the amount due William Ross and Baker Johnson for principal and interest due on their mortgage to the 1st May, 1820, and he finds due said Ross and Johnson the principal sum of $12,464 89 and $2,580 61 for interest thereon, making in the whole the sum $15,045 50, and said Mayburry, the principal sum of $7,000, and $2,134 66 for interest thereon, making in the whole $9,134 66. The Auditor begs leave further to report that after deducting Trustee's commission, costs, and expenses aforesaid, the amount due on the mortgages aforesaid, on said 2d day of May, 1820, from the proceeds of sale, he finds a balance remaining of $2,422 45 to be applied towards payment of interest accruing on said Ross, Johnson, and Mayburry's claims, and towards payment in part of the principal sum of $4,700 due John Bayly, Baker Johnson and Rebecca Jolly, on their mortgage. He has then stated the following accounts, marked A. B. and C., in account A. he has applied the cash payment due from the purchaser, after deducting therefrom the costs and expenses aforesaid, towards liquidating in part the mortgage aforesaid of the said Ross and Johnson, and the balance of said mortgage, including

interest thereon, he has directed should be paid out of the said first instalment due from the purchaser aforesaid; he has then shown in account B. the amount due said Mayburry for principal and interest on his mortgage which he has directed should be paid out of the balance of the first instalment, and out of the second instalment; and the balance, which he finds to be $1,175 68, he has applied in account C. in part payment of the principal sum due John Bayly, Baker Johnson and Rebecca Jolly, giving each claimant the priority, in payment to which they are entitled by their mortgages.

All which is submitted to the judgment of this Honourable Court.

THOMAS W. MORGAN, *Auditor.*

Whereupon the Court passed the following order of Ratification, to wit:

BAKER JOHNSON, and WILLIAM ROSS, v. WILLOUGHBY MAYBURRY. } In Frederick County Court, as a Court of Chancery, July Term, 1820, ordered by the Court, that that part of the aforegoing Report of the Auditor that relates to the claim of Baker Johnson and William Ross be ratified and confirmed, and that the remainder of said report be held under consideration for further order, the Trustee in this case is ordered to pay out of the proceeds of sales the aforesaid claim of Baker Johnson and William Ross, according to the aforegoing audit.

ABM. SHRIVER.

July 18th, 1820.

Whereupon the following Petition of Thomas Mayburry and William Weaver was filed in the tenor and of the following words, to wit:

To the Honourable the Judges of Frederick County Court, sitting as a Court of Chancery. The Petition of William Weaver and Thomas Mayburry, respectfully showeth, that a certain Willoughby Mayburry of Frederick County being indebted to your Petitioner, Thomas Mayburry, in the full sum of two thousand six hundred and twenty-five Pounds current money of Maryland, gave to your last said Petitioner his three several Bonds herewith exhibited as a part of this Petition, marked No. 1, No. 2, and No. 3, and to secure the payment whereof, he the said Willoughby executed and delivered to him the said Thomas Mayburry, the Deed of Mortgage herewith exhibited marked No. 4, and which your Petitioners pray may, together with all other exhibits hereafter to be made by them, be taken and considered by your Honours as a part of this their Petition; That the said Thomas Mayburry being indebted to the said William Weaver, also one of your Petitioners, the full amount of said Mortgage, he assigned and transferred to said Weaver all his title, claim, and interest in said Bonds and Mortgage to said Weaver in payment of said debt. The assignment of which said Mortgage, duly executed, acknowledged, and recorded, is herewith

exhibited, marked No. 5. The assignment of the Bonds being endorsed on each Bond. The said Weaver is therefore entitled to receive from said Willoughby the full amount secured to be paid by said Mortgage, and all interest thereon up to the time he may receive the same; your Petitioners further state, that the lands mentioned in said Mortgage has been sold under a Decree of your Honourable Court sitting as a Court of Chancery, to satisfy a prior Mortgage executed on the nineteenth day of March, in the year 1812, by the said Willoughby and Thomas Mayburry to Catherine Johnson, Baker Johnson, and William Ross, to which said Decree and the proceedings in the case in which the same was passed, your Petitioners refer your Honours. That after the payment of the Mortgage money for which the said Mortgaged property has been sold, the said Mortgage marked Exhibit No. 4, is next in priority, and as such entitled by the rule and principles of this Court to be fully paid off out of the remaining purchase money, if there be a sufficiency for that purpose, and if not sufficient, then the same to be applied as far as it will go towards the payment thereof; your Petitioners therefore pray your Honours to pass an order directing the Auditor of your Honourable Court in auditing the said case above referred to, and to which your Honours are referred, to allow to the said William Weaver the full amount of his said Mortgage as assigned to him as aforesaid, after the full amount of the Mortgage to said Catherine, Baker, and William, and all costs, commission to Trustee, and so forth have been allowed and audited by him, and that your Honours will pass an order on the Trustee appointed by your Honours to sell said Mortgaged premises, to pay over to your Petitioner William Weaver, the full amount of his said claim, when the same has been audited and allowed him as aforesaid, and whenever the said Trustee shall receive the money for that purpose, from the purchaser of said property. And your petitioners further pray your Honours to grant them such other and further relief in the premises as the nature of their case and equity and good conscience may require, and as in duty bound, your petitioners will ever pray, &c.

FRED'K. A. SCHLEY,
Sol'r. for Petitioners.

Whereupon the Court passed the following order in the tenor and of the following words, to wit:

Ordered, that the Auditor audit the within claim so prayed. The final admission of said claim to be the subject of a further order.

ABM. SHRIVER.

Aug. 3d, 1820.

Exhibit No. 1. Referred to in the aforegoing petition contained in the following words, to wit:

Know all men by these presents, that I, Willoughby Mayburry of Frederick County and State of Maryland, am firmly bound unto Thomas Mayburry of the County and State aforesaid, in the full

and just sum of seventeen hundred and fifty pounds current money, to be paid unto the said Thomas Mayburry, or to his certain Attorney, Executors, Administrators, or Assigns, to which payment well and truly to be made and done, I bind myself, my heirs, executors and administrators, and every of them firmly by these presents, sealed with my seal, and dated this ninth day of March, Anno Domini, one thousand eight hundred and thirteen, the condition of the above obligation is such, that if the above bound Willoughby Mayburry do and shall well and truly pay or cause to be paid, unto the said Thomas Mayburry or to his certain Attorney, Executors, Administrators, or Assigns, the just and full sum of eight hundred and seventy-five pounds current money at or upon the first day of April, in the year eighteen hundred and fourteen, then the above obligation to be void, else to remain in full force and virtue in law.

Signed, sealed and delivered in the presence of GEORGE KOLB and THOMAS B. JONES. } WILL'Y. MAYBURRY. [SEAL.]

(On the back of said Bond was the following endorsement, to wit:)

I hereby assign, transfer, and make over unto William Weaver all my right, title, and interest to and in the within Bond, and guarantee the payment thereof, for value of him received this twelfth day of May, 1820.

Witness, D. H. THOMSON. } THOMAS MAYBURRY.

Exhibit No. 2. Referred to in the within petition contained in the following words, to wit:

Know all men by these presents, that I, Willoughby Mayburry, of Frederick County and State of Maryland, am held and firmly bound unto Thomas Mayburry of the County and State aforesaid, in the full and just sum of seventeen hundred and fifty pounds current money, to be paid unto the said Thomas Mayburry or to his certain Attorney, Executors, Administrators, or Assigns. To which payment well and truly to be made and done, I bind myself, my Heirs, Executors, and Administrators and every of them firmly by these presents, sealed with my seal, and dated this ninth day of March, Anno Domini one thousand eight hundred and thirteen. The condition of the above obligation is such, that if the above bound Willoughby Mayburry do and shall well and truly pay or cause to be paid unto the said Thomas Mayburry or to his certain Attorney, Executors, Administrators, or Assigns, the just and full sum of eight hundred and seventy-five pounds current money at or upon the first day of April, in the year eighteen hundred and fif-

teen, then the above obligation to be void, else to remain in full force and virtue in law.

Signed, sealed and delivered in the presence of GEORGE KOLB, THOMAS B. JONES. } WILL'Y. MAYBURRY. [SEAL.]

(On the back of said Bond was the following endorsement, to wit:)

I do hereby assign, transfer and set over unto William Weaver, all my right, title and interest of the within Bond for value received, this twenty-seventh day of August, 1819.

THOMAS MAYBURRY.

Exhibit No. 3. Referred to in the within petition contained in the following words, to wit:

Know all men by these presents, that I, Willoughby Mayburry, of Frederick County and State of Maryland, am held and firmly bound unto Thomas Mayburry of the County and State aforesaid, in the full and just sum of seventeen hundred and fifty pounds current money, to be paid unto the said Thomas Mayburry or to his certain Attorney, Executors, Administrators, or Assigns, to which payment well and truly to be made and done, I bind myself, my Heirs, Executors and Administrators, and every of them firmly by these presents, sealed with my seal and dated this ninth day of March, Anno Domini, one thousand eight hundred and thirteen. The condition of the above obligation is such, that if the above bound Willoughby Mayburry do and shall well and truly pay or cause to be paid, unto the said Thomas Mayburry, or to his certain Attorney, Executors, Administrators, or Assigns, the just and full sum of eight hundred and seventy-five pounds current money, at or upon the first day of April, in the year eighteen hundred and sixteen, then the above obligation to be void, else to remain in full force and virtue in law.

Signed, sealed and delivered in the presence of GEORGE KOLB, THOMAS B. JONES. } WILL'Y. MAYBURRY. [SEAL.]

(On the back of said Bond was the following endorsement, to wit:)

For value received, I assign the within Bond to William Weaver, witness my hand, this 4th May, 1818.

Witness, THOMAS M. JOLLY. } THOMAS MAYBURRY.

Exhibit No. 4. Referred to in the within petition contained in the following words, to wit:

This Indenture, made this ninth day of March, in the year eighteen hundred and thirteen, between Willoughby Mayburry of Frederick County and State of Maryland of the one part, and Thomas Mayburry of the County and State aforesaid of the other part. Whereas the said Willoughby by his three several obligations duly executed, bearing date the ninth of March, in the year aforesaid, stands bound unto the said Thomas Mayburry, his Executors, Administrators and Assigns, in the penal sum in each Bond, of seventeen hundred and fifty pounds current money, with a condition under each Bond written, for the payment of eight hundred and seventy-five pounds current money, the first Bond payable on or before the first day of April, in the year eighteen hundred and fourteen, the second the first of April eighteen hundred and fifteen, and the third the day and year following, as by the said Bonds or obligations and conditions may more fully appear. Now this Indenture witnesseth, that the said Willoughby Mayburry in consideration of the said debt or sum of money owing to the said Thomas Mayburry as aforesaid, and for the better securing the payment thereof, to the said Thomas, his Executors, Administrators, or Assigns, according to the condition of the said Bonds, and also in consideration of the further sum of one dollar to him, the said Willoughby Mayburry, by the said Thomas Mayburry in hand paid at or before the sealing and delivery of these presents, the receipt whereof the said Willoughby doth hereby acknowledge, hath granted, bargained, sold, released and confirmed, and by these presents doth grant, bargain, sell, release and confirm unto the said Thomas Mayburry, and to his heirs and assigns, Catoctin Furnace, and those tracts of land attached to the same Iron works situate, lying and being in the County aforesaid, being the said Furnace and lands sold and conveyed to the said Willoughby and Thomas by Catherine Johnson, Baker Johnson, and William Ross, Executors of Col. Baker Johnson, as fully as the same has been conveyed to the said Willoughby and Thomas, by the Executors aforesaid, as by reference to that Deed may more fully and at large appear, to have and to hold the said Furnace and all the tracts of land attached thereto, with the appurtenances thereunto belonging, unto the said Thomas Mayburry, his heirs and assigns, to the only proper use and behoof of the said Thomas Mayburry, his heirs and assigns for ever, and to and for no other use, intent or purpose whatsoever; Provided always, and it is the true intent and meaning of these presents and of the said parties hereunto, that if the said Willoughby, his Heirs, Executors, or Administrators, do and shall well and truly pay or cause to be paid unto the said Thomas, his Executors, Administrators or Assigns, the said several sums of eight hundred and seventy-five pounds, according to the conditions of the above in part recited bonds or obligations, without any deduction or abatement whatsoever, then and from thenceforth these presents, and every matter and thing herein contained, shall cease and be utterly null and void, any thing herein contained to the contrary thereof, in any wise notwithstanding; and, lastly, it is covenanted and agreed upon between

both of the said parties, that until default shall be made in payment of the said several sums of money, according to the times above limited for the payment thereof, it shall be lawful for the said Willoughby, his heirs and assigns, peaceably and quietly to possess and enjoy all and singular the premises above granted with the appurtenances, and to have and to take the rents, issues and profits thereof to his and their own particular use and benefit, any thing herein contained to the contrary thereof notwithstanding.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of THOMAS B. JONES, GEORGE KOLB. } WILL'Y. MAYBURRY. [SEAL.]

STATE OF MARYLAND, *Frederick County, ss.*

Be it remembered, that on this tenth day of March, in the year of our Lord eighteen hundred and thirteen, personally appears Willoughby Mayburry, the party within named, before us the subscribers, two Justices of the Peace in and for the county aforesaid, and acknowledges the within deed of mortgage to be his act and deed, and the Furnace and lands and premises therein mentioned, to be the right and estate of the within named Thomas Mayburry, party grantee or mortgagee, also therein named, his heirs and assigns for ever, according to the purport, true intent and meaning of the said deed of mortgage and the acts of Assembly in such case made and provided.

Taken and certified the day and year above written.

THOMAS B. JONES,
GEORGE KOLB.

MARYLAND, *Frederick County, ss.*

I hereby certify, that the foregoing is a true copy, taken from Liber W. R. No. 44, Folios 725 and 726, one of the Land Records of Frederick County Court.

[SEAL.]

In testimony whereof I hereunto set my name and affix my seal of office, this 21st day of June, one thousand eight hundred and thirty-two.

JOHN SCHLEY,
Clerk Frederick County Court.

Exhibit No. 5, referred to in the within Petition, contained in the following words, to wit:

This Indenture, made this twelfth day of May, in the year of our Lord one thousand eight hundred and twenty, between Thomas Mayburry of Botetourt County and State of Virginia, of the one

part, and William Weaver of Philadelphia County, and State of Pennsylvania, of the other part, witnesseth, Whereas Willoughby Mayburry of Frederick County, and State of Maryland, on the ninth day of March, in the year eighteen hundred and thirteen, by his Deed of Mortgage of that date, for the consideration of two thousand six hundred and twenty-five pounds, as also the further consideration of one dollar, grant, bargain, sell, release and confirm unto the said Thomas Mayburry, and to his heirs and assigns, Catoctin Furnace, and those Tracts of Land attached to the same Iron Works, situate, lying, and being in Frederick County aforesaid, being the said Furnace and lands sold and conveyed to the said Thomas and Willoughby by Catherine Johnson, Baker Johnson, and William Ross, executors of Colonel Baker Johnson, as fully as the same had been conveyed to the said Willoughby and Thomas by the executors aforesaid, as by reference to that Deed will more fully and at large appear, to have and to hold the said Furnace, and all the tracts of land attached thereto, with the appurtenances thereunto belonging, unto the said Thomas Mayburry, his heirs and assigns, for ever; Provided always, and it was the true intent and meaning of said Mortgage, and the parties thereunto, that if the said Willoughby Mayburry and his heirs, executors, or administrators did and should well and truly pay or cause to be paid unto the said Thomas, his executors, administrators or assigns, the said sum of twenty-six hundred and twenty-five pounds lawful money of Maryland, in the following manner, to wit, eight hundred and seventy-five pounds on the first day of April, in the year eighteen hundred and fourteen, the like sum of eight hundred and seventy-five pounds on the first day of April, in the year eighteen hundred and fifteen, and the residue, eight hundred and seventy-five pounds, on the first day of April, in the year eighteen hundred and sixteen, then and thenceforth the said Deed of Mortgage, and every matter and thing therein contained, should cease and be utterly null and void, any thing therein contained to the contrary thereof in any wise notwithstanding, as by the said Mortgage duly recorded in Liber W. R. No. 44, Folios 725, 726, and 727, one of the Land Records of Frederick County, reference being thereunto had may more fully and at large appear. And whereas the said Thomas Mayburry, in consideration of the said sum of two thousand six hundred and twenty-five pounds, current money of the State of Maryland, with the interest due thereon, according to the times of payment aforesaid, hath agreed to assign the said Mortgage to the said William Weaver. Now this Indenture further witnesseth, that the said Thomas Mayburry, in consideration of the sum of three thousand four hundred and thirty-one pounds 5*s.* pounds, current money of the State of Maryland, to him in hand paid by the said William Weaver before the sealing and delivery hereof, hath granted, bargained, sold, and transferred, and by these presents doth grant, bargain, sell, assign, transfer, and make over to the said William Weaver, his heirs and assigns for ever, the said "Catoctin Furnace" so as aforesaid described, and all the said premises, to

have and to hold the same to him the said William Weaver, his heirs and assigns for ever, as fully and in as ample manner as the said Thomas Mayburry, his heirs or assigns, might hold and enjoy the same by virtue of the Mortgage Deed aforesaid, and not otherwise; and the said Thomas Mayburry doth for himself, his heirs, executors, and administrators hereby authorize and empower the said William Weaver, his heirs, executors, and administrators to receive to his and their own use the sum or sums of money mentioned in the condition of said Deed of Mortgage, whenever the same shall be tendered or paid to him or them by the said Willoughby Mayburry, his heirs, executors, or administrators, agreeably thereto, and to discharge the said Mortgage, or reconvey the premises upon redemption thereof, as by law is provided, as fully, to all intents and purposes, as the said Thomas Mayburry, his heirs, executors or administrators, might or could have discharged or reconvey the same in case of such tender, payment, or redemption as if this assignment had not been made, and the said Thomas Mayburry for himself, his heirs, executors, and administrators doth covenant with the said William Weaver, his heirs and assigns, that he, the said Thomas Mayburry, hath good right to assign the said premises as aforesaid, and that he, the said William Weaver, shall and may have, hold, occupy, and possess the same, subject, however, to the right of redemption, as by law in such cases is provided, against the lawful claim of all persons. And the said Thomas Mayburry doth hereby constitute and appoint Frederick A. Schley his Attorney, authorizing him to acknowledge this Deed of assignment for and as the act and Deed of the said Thomas Mayburry, before any Court, Judge, or Justices, in the State of Maryland, according to the laws of that State in such cases made and provided. In witness whereof the said Thomas Mayburry hath hereunto subscribed his name, and affixed his seal the day and year first herein before written.

Signed, sealed, and delivered in the presence of J. M. Bowyer, M. Pitzer. } THOMAS MAYBURRY. [SEAL.]

State of Virginia, *Botetourt County, ss.*

Be it remembered, that on this twelfth day of May, in the year of our Lord one thousand eight hundred and twenty, personally appears John M. Bowyer and Madison Pitzer, the subscribing witnesses to the aforegoing Indenture, before me, the subscriber, one of the Judges of the Court of Common Pleas for the County of Botetourt aforesaid, and on their solemn oaths taken on the Holy Evangely of Almighty God, deposeth and saith that they were present, and saw Thomas Mayburry, party grantor and assignor in the aforegoing Indenture and Deed of Assignment, with the letter of Attorney therein contained, sign and seal, and as his act and deed duly execute and delivert he aforegoing deed and letter of attorney, for the uses, intents, and purposes therein expressed and set forth, and

that at the time of the execution thereof, these deponents did set and subscribe their names as witnesses thereto in manner as thereby appears. Sworn before me the day and year aforesaid.

THOMAS N. BURWELL.

Be it remembered, that on this twelfth day of July, in the year eighteen hundred and twenty, before me the subscriber, one of the Judges of the Fifth Judicial District in Maryland, appears Frederick A. Schley, of Frederick county, Maryland, named in the power of attorney contained in the aforegoing indenture, the execution whereof hath been duly proved, and by virtue of the said power of attorney contained in the said indenture, acknowledges that the said indenture for and in the name of, and as the act and deed of the above and therein named Thomas Mayburry, in order that the same may be recorded according to law.

ABRAHAM SHRIVER.

VIRGINIA, *Botetourt County, to wit:*

I, Henry Bowyer, clerk of the court of the county aforesaid, do certify that Thomas N. Burwell, gentleman, whose name is subscribed to the within certificate, is now, and was at the time of subscribing the same, one of the Justices of the court aforesaid, duly sworn in the commission of the peace and court of common pleas for said county, and that full faith is due to his official acts, as well in courts of justice as thereout.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of my said office, this twelfth day of May, in the year of Christ one thousand eight hundred and twenty, and of the commonwealth of Virginia the 44th.

[SEAL.]

HY. BOWYER.

And the said cause so standing continued from term to term until July term, 1822, the following petition of Rebecca Jolly was filed in the words and of the tenor following, to wit: To the honourable the Judges of Frederick county court, sitting as a court of chancery, the petition of Rebecca Jolly respectfully showeth, that Willoughby Mayburry on the 26th day of April, in the year 1806, borrowed from your petitioner the sum of two thousand dollars, and at the same time executed and delivered to your petitioner, as evidence of said debt, his bond herewith exhibited, marked (R.) and which your petitioner prays may be taken as a part of this petition. That the said Willoughby paid the interest due on said bond to your petitioner from time to time up to the 26th day of April, in the year 1813. That on the 24th day of August, in the year 1819, the said Willoughby, to secure the payment of the principal and interest then due your petitioner on said bond, as also to secure and indemnify a certain Baker Johnson, and John Baily, as his endorsers and securities for certain debts to the banks in Frederick

county, executed and delivered to your petitioner, as also to said Baily and Johnson, his deed of mortgage herewith exhibited as a part of this petition, marked (L.) That said mortgaged premises was sold under a decree of your honourable court passed in a cause therein, between Baker Johnson and William Ross complainants, and the said Willoughby defendant, to satisfy a mortgage on said property prior to your petitioner's, as will more fully and at large appear by reference to the proceedings in said cause, and which said proceedings your honours are referred to as forming a part of this petition. That in the auditor's report in said case the sum of eleven hundred and seventy-five dollars and 68 cents is a surplus over and above the payment of all the liens on said mortgaged property, prior to the mortgage of your petitioner and said Baily and Johnson, and is audited to be applied in part payment of the 4700 dollars mentioned in last said mortgage; your petitioner is advised that said Baily and Johnson are not entitled to receive from said trustee any part of said surplus, until they produce to your honourable court sufficient vouchers to show that they have paid the same for which they became securities as aforesaid, and also that your petitioner is entitled to receive such proportion of said surplus as the full amount of her said claim on said bond including principal and interest, amounting to, on the day said mortgage was executed, will bear to the sum which said Baily and Johnson may make appear to your honourable court they have paid and satisfied under said mortgage; your petitioner therefore prays your honours to pass an order requiring said Baily and Johnson, by some early day, to exhibit in your honourable court the proper vouchers, showing how much of said twenty-seven hundred dollars, mentioned in said mortgage, and for the payment of which they were security, has been paid by them, that they may be allowed their fair proportion of said surplus for the same, after allowing your petitioner her fair proportion for the debt and interest due to her as aforesaid. And your petitioner further prays, that an order may be passed requiring said trustee forthwith to pay to your petitioner the sum of five hundred and ninety-four dollars, it being not more than her proportion of said surplus on her said claim, admitting that said Baily and Johnson have paid the full amount for which they were bound as securities for said Mayburry, at the time said mortgage, marked L. was executed, and leaving the balance of your petitioner's claim to be decided on by your honours, after said Baily and Johnson shall have exhibited their vouchers as aforesaid; and your petitioner prays such other and further relief in the premises as the nature of her case, and justice and equity may require; and as in duty bound your petitioner will ever pray, &c.

FRED'K. A. SCHLEY,
Solicitor for Petitioner.

Exhibit L. referred to in the within and aforegoing petition, contained in the following words, to wit:

This Indenture, made this twenty-fourth day of August, eighteen hundred and nineteen, between Willoughby Mayburry of Frederick

County and State of Maryland of the one part, and Baker Johnson and John Baily of the County and State aforesaid, and Rebecca Jolly of the State of Pennsylvania of the other part; whereas the said Willoughby is justly bound to the banks in Frederick County in the sum of two thousand seven hundred dollars, for the payment of which the said Baker and John are bound as indorsers and securities for the same; and the said Willoughby is also justly indebted to the said Rebecca in the sum of two thousand dollars: Now this Indenture witnesseth, that the said Willoughby Mayburry, to secure and indemnify the said Baker and John against the debts due the banks as aforesaid, and for which they are mutually bound with the said Willoughby, and also to secure the payment of the said two thousand dollars to the said Rebecca, with the interest due thereon, and also in consideration of the further sum of one dollar to him in hand paid by the said Baker, John and Rebecca before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, released, and confirmed, and by these presents doth grant, bargain, sell, release, and confirm unto the said Baker Johnson, John Baily and Rebecca Jolly, and to their heirs and assigns, all that Iron Furnace called Catoctin, and all the lands, buildings and improvements attached thereto, situate in Frederick County, in the State aforesaid, as fully and to the same extent as the said Willoughby holds the same by a deed of conveyance made to the said Willoughby and Thomas Mayburry, by Catherine Johnson, Baker Johnson, and William Ross, bearing date the fifth of March, eighteen hundred and twelve, and recorded in the Land Records of Frederick County, reference being thereunto had, will more fully and at large appear. To have and to hold the said Furnace and lands aforesaid, with the appurtenances, unto the said Baker and John and Rebecca, their heirs and assigns, to the only proper use of the said Baker, John and Rebecca, their heirs and assigns for ever. Provided always, that if the said Willoughby, his heirs, executors or administrators do and shall, well and truly pay or cause to be paid unto the banks aforesaid, or unto the said Baker and John, the sum of two thousand seven hundred dollars, with all interest accruing thereon, or as much of the said debt and interest as may remain unpaid, and shall pay or cause to be paid unto the said Rebecca, the sum of two thousand dollars, and all interest thereon, then and from thenceforth these presents shall cease and be void, any thing herein contained to the contrary thereof, notwithstanding; and lastly, it is agreed that the said Willoughby is to continue in full possession of the premises aforesaid, enjoying all the rents, profits and issues thereof, until default of payment as aforesaid is made.

In witness whereof, the said Willoughby Mayburry has hereunto set his hand and seal the day and year first above written.

Signed, sealed and delivered in the presence of ABR'M SHRIVER. } WILL'Y. MAYBURRY. [SEAL.]

STATE OF MARYLAND, *Frederick County, ss.*

Be it remembered, that on this 24th day of August, eighteen hundred and nineteen, personally appears before me the subscriber, one of the Associate Judges of the fifth Judicial District, in the State of Maryland, Willoughby Mayburry, the grantor within and above mentioned, and acknowledges the above mortgage or instrument of writing to be his act and deed, and the Furnace and lands and premises therein mentioned, and thereby mortgaged to be the right and estate of the within named Baker Johnson, John Bayly and Rebecca Jolly, their heirs and assigns for ever, according to the true intent and meaning thereof, and the acts of assembly in such case made and provided. Taken and certified the day and year above written.

AB'M SHRIVER.

Whereupon, the Court passed the following order, in the words and of the following tenor, to wit.

BAKER JOHNSON and WILLIAM ROSS, *v.* WILLOUGHBY MAYBURRY.

In Frederick County Court, as a Court of Equity, July Term, 1822. On considering the petition of Rebecca Jolly, filed in this cause this Term, several questions arise as to the principle on which the money is to be apportioned; first, whether Weaver's claim, under Thomas Mayburry's mortgage, is to draw interest up to the day the money is ordered to be paid over to him, or whether it is only to draw interest up to the second day of May, 1822, the time when the money was in the hands of the trustee, and detained there by order of this Court at the instance of Rutherford, whose petition has since been dismissed; secondly, whether Mrs. Jolly's claim is to be considered as an entire and aggregate sum with the interest added, at the time the mortgage to her was executed, or whether she is only to be considered as entitled to a proportion of the surplus on a principal of two thousand dollars, the sum named in the mortgage, and thirdly, on what sum Johnson and Baily are to draw their proportion, which involves a question of fact as to the actual amount paid by them, which can only be ascertained by proof; the Court think it proper not to act upon these questions until all the parties concerned, or their solicitors are before them. The Court will therefore, for the present, merely pass such order as the justice of the case seems immediately to require. It is therefore, this 19th day of July, 1822, ordered, that John Bayly and Baker Johnson's mortgagees aforesaid, exhibit to this Court on or before the fifteenth day of August next, the vouchers showing the amount of money paid by them under said mortgage, and for which they claim a proportion of the surplus money, after the payment of Weaver's claim. It is also ordered that the trustee, Daniel Krug, pay to Rebecca Jolly the

sum of four hundred and sixty dollars on her claim. The balance, if any, to be the subject of a future and final order.

AB'M SHRIVER.

Whereupon, the following petition of William Weaver was filed in the words, and of tenor following, to wit:

To the Honourable, the Judges of Frederick County Court sitting as a Court of Chancery. The petition of William Weaver respectfully showeth, that by his petition and the accompanying Exhibits heretofore filed by him, and to be found among the papers in case number 242 in your Honourable Court, and to which he begs leave to refer your Honours as a part of this his petition, he is entitled, as the assignee of Thomas Mayburry, to receive a large sum of money from the trustee appointed by your Honours to sell certain property mortgaged by a certain Willoughby Mayburry, to said Thomas Mayburry, as soon as said trustee received the same from the purchaser of said property, your petitioner states that said money is long since due; that your petitioner resides in the City of Philadelphia, and is desirous of receiving the full amount of his said claim, in par funds, as early as he can; that he believes this can be most readily effected by having the said money paid into your Honourable Court, where he will be able without the least delay to receive the same under the order of your Honourable Court; your petitioner therefore prays your Honours to pass an order on said trustee, requiring and directing him to pay into your Honourable Court the full amount of your petitioner's said claim, by some early day to be named by your Honours, and may it please your Honours to grant to your petitioner such other and further relief in the premises as the nature of his case may require.

FRED'K. A. SCHLEY,
Sol'r. for Petitioner.

Whereupon the Court passed the following order in the words and of the tenor following, to wit: In Frederick County Court as a Court of Chancery, July Term, 1822. On the within Petition it is ordered, that Daniel Kurg, the Trustee within named, pay into Frederick County Court, as a Court of Chancery, on or before the 15th day of August next, the money which has been received by him as Trustee, from John Brien the purchaser, and which has not been paid out by said Trustee under the orders of this Court, Provided a copy of this order is served on said Trustee on or before the first day of August next.

ABM. SHRIVER.

July 19*th*, 1822.

Whereupon the following order was passed by the Court in the following words, and of the tenor following, to wit.

BAKER JOHNSON, and WILLIAM ROSS, *vs.* WILLOUGHBY MAYBURRY.

In Frederick County Court, as a Court of Equity, July Term, 1822. By an order of this Court, dated the 19th July, 1822, the Trustee in this case, was ordered on the Petition of William Weaver to pay into this Court on or before the 15th day of August next thereafter, the money which had been received by him as Trustee from John Brien the purchaser, and which had not been paid out by said Trustee under the orders of this Court, and the Trustee being now in Court and offering to comply with said order, and the said Weaver being also in Court, and desirous of receiving the amount of his claim under Thomas Mayburry's Mortgage, the Court therefore order and direct that the Trustee pay to said Weaver eight thousand Dollars; the balance of his claim, if any, to be the subject of a future and final order, and that the Trustee pay the balance of the money received by him as aforesaid, into the Frederick County Bank, subject to the order of this Court, and that the Clerk furnish the Trustee with a copy of this order.

ABM. SHRIVER.

August 15th, 1822.

Whereupon the following Petition of William Weaver was filed in the words and of the tenor following, to wit.

To the Honourable the Judges of Frederick County Court, setting as a Court of Equity, The Petition of William Weaver respectfully represents, that by virtue of an order passed by your Honourable Court, on the 15th day of August, 1822, in the case of Baker Johnson and William Ross, against Willoughby Mayburry, defending in your Honourable Court, Daniel Krug the Trustee, was directed to pay your Petitioner eight thousand dollars, in part of the amount of your Petitioner's claim. That by said order said Trustee was to pay into the Frederick County Bank the balance of the money in his hands; your Petitioner further states, that said Trustee paid him the eight thousand dollars as directed, but has not yet paid the amount or any part thereof into the Frederick County Bank which he was ordered to do, your Petitioner to save trouble is willing to receive the balance of his claim from the hands of the Trustee; your Petitioner therefore prays your Honours to pass an order on said Trustee to pay him the balance of his claim as appears by the audit, with the additional interest which has accrued thereon, and to grant such other relief as justice and equity may require, and as in duty bound your petitioner will ever pray, &c.

FRED'K. A. SCHLEY,
For Petitioner.

Whereupon the Court passed the following order in the words and of the tenor following, to wit. On considering the above Petition, the Trustee is hereby ordered and directed to pay to said Weaver or his Attorney, nineteen hundred and seventy-four dollars and sixty-six cents, and to pay the balance of the whole purchase

money with such interest thereon, as he has, or ought to have received, into the Frederick County Bank as before directed. The interest claimed by the above Petitioner is reserved for further consideration and order.

AB'M. SHRIVER.

Sept. 16*th*, 1822.

And the said cause so standing, continued from Term to Term until, July Term, 1823,

The Court passed the following order in the words and of the tenor following, to wit.

BAKER JOHNSON, and WILLIAM ROSS, *vs.* WILLOUGHBY MAYBURRY.

In Frederick County Court, as a Court of Equity, July Term, 1823. Since passing the order on the Petition filed by Mrs. Jolly in the above case, John Baily and Baker Johnson have filed vouchers, showing payments made by them for Mayburry under their Mortgage, to the amount including principal, interest, and costs, up to October, 1820, of 2178 dollars and 54 cents. Mrs. Jolly's claim under said Mortgage, including interest to October, 1820, amounts to 2900 dollars. There is, however, according to the Auditor's Report, a balance of only 1175 dollars and 68 cents to pay these two sums, consequently each must receive no more than its fair proportion of this balance; Mrs. Jolly's proportion would be 671 dollars and 3 cents, and Baily and Johnson's 504 dollars and 65 cents, but Mrs. Jolly has already received, on a former order, 460 dollars in part of her said proportion, and thereby leaving a balance of only 211 dollars and 3 cents due to her. The Court has considered the question of interest on Weaver's claim, and are of opinion that no interest can be allowed after the money came into the Trustee's hands, the circumstance of its being detained by Rutherford's Petition and claim cannot operate to the disadvantage of the other Mortgagees, who were not parties litigant in that petition and claim. It was unfortunate for Weaver that Rutherford ever passed his claim, but nevertheless this Court cannot suffer that litigation to operate an injury to innocent persons in no way connected or concerned in the controversy. If the Court were to adopt a different principle, it might have so happened that by a protracted controversy between Weaver and Rutherford, the whole amount of the fund set apart by the audit for Jolly, Baily, and Johnson, would have been consumed to pay the interest accumulating on Weaver's claim, and they not get one cent, which would be inequitable. It is therefore, this ninth day of October, 1823, adjudged and ordered by the Court, that the Trustee, Daniel Krug, pay Rebecca Jolly or her Attorney, the sum of two hundred and eleven dollars and three cents, and that said Trustee pay to John Baily and Baker Johnson five hundred and four dollars and sixty-five cents, to be divided between said Baily and Johnson, in proportion to the amount paid by each under said Mortgage.

AB'M. SHRIVER.

STATE OF MARYLAND, *Frederick County*, ss.

I do hereby certify, that the within and foregoing is truly taken from the Records of Proceedings of Frederick County Court.

[SEAL.]

In testimony whereof I have hereunto subscribed my name and affixed the Seal of my Office this 7th day of July, in the year of our Lord 1832.

JOHN SCHLEY,
Clerk, Frederick County Court.

(*Thus Endorsed.*)

MAYBURRY *vs.* BRIEN.

This Transcript is admitted to have the same effect as if duly authenticated, saving all legal exceptions to the nature thereof; and may be filed as an exhibit with Defendant's answer.

CHARLES F. MAYER,
Plff. Att'y.

(*Exhibit J. B. No.* 6—*filed with the answer.*)

At the request of John Brien, the following Deed is recorded, August 17th, 1822, viz.:

This Indenture, made this 14th day of August, in the year of our Lord one thousand eight hundred and twenty-two, between Daniel Krug, of Frederick County, and State of Maryland, of the one part, and John Brien, of the County and State aforesaid, of the other part. Whereas by a Decree of Frederick County Court, sitting as a Court of Equity, bearing date the twenty-fifth day of March, eighteen hundred and twenty, it was, among other things, ordered, adjudged and decreed by the said Court in a certain cause then depending in the said Court between Baker Johnson and William Ross, complainants, and Willoughby Mayburry, defendant, that the whole of the mortgaged premises mentioned and set forth in the Bill and Pleadings in that cause be sold, and the above named Daniel Krug was appointed a Trustee and authorized and empowered to sell and dispose of the same, that in pursuance of the said Decree, the said Daniel Krug did on the second day of May, eighteen hundred and twenty, sell and dispose of, to the above named John Brien, all the Lands and Appurtenances mentioned in the said Mortgage, at and for the sum of twenty-seven thousand five hundred and five dollars current money, and whereas the purchase money for the said Lands and Premises hath been fully paid and satisfied, and the said Daniel Krug is authorized by the said Decree to execute a conveyance for the same, and to comply with the terms of the said Decree, the said Daniel Krug hath agreed to execute these presents. Now this Indenture witnesseth, that the

said Daniel Krug, in consideration of the above recited Premises, and also of one dollar current money to him in hand paid by the said John Brien, the receipt whereof is hereby acknowledged and himself therewith to be paid, hath granted, bargained, sold, released, aliened, enfeoffed and confirmed, and by these presents doth grant, bargain, sell, release, alien, enfeoff and confirm unto the said John Brien, his Heirs and Assigns for ever, the Iron Furnace, called Catoctin, and all the Lands attached thereto, situate in Frederick County, as fully, and to the same extent, as the aforesaid Willoughby and his brother Thomas Mayburry held the same under the Deed of conveyance, made to the said Willoughby and Thomas by Catherine Johnson, Baker Johnson and William Ross, bearing date the fifth of March, eighteen hundred and twelve, reference thereto being had, the Lands and Premises by these presents conveyed or intended so to be, will more fully and at large appear. To have and to hold the said Furnace and the Lands and Premises with every of the Appurtenances, unto the said John Brien, his Heirs and Assigns for ever, to his and their only proper use and behoof, and to and for no other use, intent or purpose whatsoever. In witness whereof the said Daniel Krug hath hereunto set his hand and seal, the day and year first above written.

Signed, sealed and delivered in the presence of ABM. SHRIVER. } DANIEL KRUG. [SEAL.]

"Which is thus endorsed."

STATE OF MARYLAND, ss. *Frederick County, to wit.*

Be it remembered, that on this 14th day of August, A. D. 1822, personally appears Daniel Krug the trustee and party grantor within named before the subscriber one of the Associate Judges of the fifth judicial district of the State of Maryland and acknowledges the within deed or instrument of writing to be his act and deed, and the furnace, and the lands and premises therein mentioned to be the right and estate of the within named John Brien party grantee, also therein named, his heirs and assigns for ever, according to the purport, true intent and meaning of the said deed, and the acts of Assembly in such case made and provided.

Taken and certified the day and year above written.

ABM. SHRIVER.

MARYLAND, *Frederick County, to wit.*

I hereby certify, that the foregoing is truly taken from Liber I. S. No. 16, Folios, 324 and 325, one of the Land Records of Frederick County.

In testimony whereof I hereunto subscribe my name and affix the seal of Frederick County Court, this twelfth day of April, 1832.

[SEAL.]

JOHN SCHLEY,
Clk. Fredk. County.

On the same day the said parties, by their solicitors aforesaid, filed in the said cause an agreement in the words following, to wit:

Agreement.

SUSAN MAYBURRY *vs.* JOHN BRIEN. } Equity side of the Circuit Court of the United States, for the fourth Circuit, in and for the District of Maryland. Bill and answer filed.

It is agreed that the deposition of William Ross, Esquire, of Frederick Town, may be taken by the defendant, before William Schley, Esquire, of the same place, and that the same being sworn to before a Justice of the Peace for Frederick County, may be read in evidence on the trial of the above case, subject to all legal exceptions as to the matter of said testimony; it being understood, that the plaintiff may notwithstanding, file exceptions to the answer of the defendant, according to the rules of the court; and also that five days' notice of the taking of the deposition be given to the counsel of the plaintiff.

J. MEREDITH,
For the Def't.
CHARLES F. MAYER,
Sol. of Pl'ff.

Balto. 23*d May*, 1832.

Afterwards, to wit, on the third day of October, in the year of our Lord one thousand eight hundred and thirty-two, the said John Brien, by his solicitor aforesaid, filed in the said cause, the deposition of William Ross, Esquire, which is in the words following, to wit:

Deposition of William Ross.

SUSAN MAYBURRY *vs.* JOHN BRIEN. } Equity side of the Circuit Court of the United States, for the fourth Circuit, in and for the District of Maryland.

STATE OF MARYLAND, *Frederick County, ss.*

William Ross, one of the executors of the late Colonel Baker Johnson, personally appeared before me the subscriber, a justice of the peace, in and for the State and County aforesaid, and being duly sworn according to law, deposeth and saith that Catherine Johnson, Baker Johnson, junior, and this deponent were duly constituted the Executors of the said Colonel Johnson, and took upon themselves the duty of executors of the said Colonel Johnson; that this deponent as the active executor of the will of the said testator, sold the Catoctin Furnace and the lands attached thereto, to Willoughby and Thomas Mayburry of Pennsylvania, this deponent thinks, for the consideration of thirty-two thousand dollars, part in hand, the residue in payments, the payments to be secured by mortgage. The deed and mortgage were to be given in the beginning of March, 1812, at which time the Mayburrys were to be in Frederick, this deponent prepared the deed and mortgage, and Baker Johnson, (who resided near the Catoctin works,) one of the executors, being in town on the 5th of March, 1812, this deponent availed himself of that opportunity to have the deed by the executors

aforesaid, executed and ready for the Mayburrys—Catherine Johnson, Baker Johnson, and this deponent as executors of the said Col. Baker Johnson on that day to wit, the 5th of March, 1812, executed and acknowledged the deed to the said Mayburrys, for the Catoctin Furnace and the lands attached thereto, and this deponent retained the said deed in his hands and ready to be delivered, upon the Mayburrys making the necessary payment in hand, and securing the residue by a mortgage on the said premises. On the 19th of March, 1812, the Mayburrys came to Frederick, and on that day executed the mortgage, and when executed this deponent delivered them the deed aforesaid, and received from them the mortgage. The delivery of the deed and the mortgage were simultaneous acts, for though the deed was prepared and executed on the 5th of March, it was not delivered as the deed of the grantors until the 19th of March, 1812. This deponent further says that it was a part of the original agreement or contract of sale, that the purchase money not paid in hand should be secured by a mortgage on the premises to be sold and conveyed, and that the mortgage was executed and delivered in pursuance of that agreement. This deponent also says, that after the deed and mortgage were mutually delivered, he accompanied the Mayburrys to the clerk's office, where each party left his deed to be recorded. This deponent also says he prepared the deed of Thomas Mayburry, by which he conveyed his interest in the Furnace and premises, to Willoughby Mayburry, and also the mortgage deed from Willoughby to Thomas Mayburry, that these deeds were signed in his office on the 9th of March, 1813, and acknowledged before two justices the next day, and then delivered by the respective grantors as their act and deed. That the said deed of Thomas to Willoughby, and the said mortgage from Willoughby to Thomas Mayburry, were simultaneous acts.

W. ROSS.

Sworn to before me the subscriber, a justice of the peace in and for Frederick County, this 21st day of July, 1832.

GEORGE RICE.

I hereby certify that the foregoing deposition of Wm. Ross, Esquire, was by him subscribed, and sworn to as above stated, in my presence, at Frederick, this 21st day of July, 1832.

WILLIAM SCHLEY.

And now here at this Term, to wit, November Term, eighteen hundred and thirty-two, of the said Circuit Court, the said cause thus standing, was continued until April Term, one thousand eight hundred and thirty-three.

Afterwards, to wit, on the sixth day of March, in the year of our Lord one thousand eight hundred and thirty-three, the said John Brien by his solicitor aforesaid, filed in the said cause the following interrogatories.

Susan Mayburry	}	In the Circuit Court of the United States for
vs.	}	the 4th circuit in and for the district of
John Brien.	}	Maryland, sitting in Equity.

Defendant's Interrogatories.

Interrogatories to be propounded to Thomas Mayburry, a witness produced, sworn and examined on the part and behalf of the Defendant.

Interrogatory First.

Do you know the parties, complainant and defendant in this cause, or either, and which of them? If yea, how long have you known them, respectively?

Interrogatory Second.

Did you or not, in conjunction with your late brother Willoughby Mayburry, deceased, some time in the year 1812 contract with the executors of Baker Johnson of Frederick County, in the State of Maryland, deceased, for the purchase of the Catoctin Furnace, and the lands connected therewith, situated in said county? If yea, was it not agreed, that the executors should convey said furnace and lands, to your said brother and yourself, and that at the same time, and as a simultaneous act, you and your said brother should reconvey to said executors, the said furnace and lands by deed of mortgage to secure the payment of the purchase money for the same?

Interrogatory Third.

Were or were not, the said two deeds, that is to say, the deed from said executors to the said Willoughby Mayburry and yourself, for the said furnace and lands, and the deed of mortgage from said Willoughby and yourself as aforesaid, delivered by the grantors to the grantees respectively, at one and the same time, as simultaneous acts? and were or were not the said two deeds, lodged for record in the clerk's office of Frederick County at one and the same time?

Interrogatory Fourth.

Did you or not afterwards, and some time in the year 1813, sell and dispose of your interest in the said Catoctin Furnace, and lands aforesaid, to your said brother Willoughby Mayburry? If yea, was it not a part of the contract or agreement of said sale, that you should convey the said furnace and lands, to said Willoughby, provided said Willoughby did at the same time, and as a simultaneous act, reconvey the same to you, by his deed of mortgage, to secure the payment of the purchase money?

Interrogatory Fifth.

Were or were not, the said two last mentioned deeds, in pursuance of said agreement, executed, delivered, and acknowledged, at the same time, and as simultaneous acts; and were not the said two deeds, afterwards, and on the same day, lodged in the office of the clerk of Frederick County, to be recorded?

Interrogatory Sixth.

Do you know any other matter or thing, material to the defendant in this cause? If yea, state the same as particularly as if you had been interrogated thereto.

I. MEREDITH.
Solicitor for Defendant.

Commission to be directed on the part of the Defendant to John Ruff, Alexander P. Eskridge, and John Alexander, Esquires. Rockbridge County, Virginia.

Complainant's Cross Interrogatories.

SUSAN MAYBURRY *vs.* JOHN BRIEN. } Commission to Virginia.

Cross Interrogatories to be answered by Thomas Mayburry—The Plaintiff protesting, however, to his examination upon the Defendant's Interrogatories as hereinafter stated.

Interrogatory First.

What was the agreement made by you and your brother, for the purchase of the Catoctin Furnace and the lands connected with it; and with whom, or with which of the executors of Baker Johnson, did you treat, or make the bargain, or finally agree for the same? What was the price, and what were the terms, and all the conditions, what as to titles and conveyances? Was the agreement in writing? If yea, produce it, or say why you do not.

Interrogatory Second.

Was or was there not, any positive stipulation in the agreement, that the deed for Catoctin Furnace and the lands aforesaid, should not be delivered until a mortgage of the same were executed, and delivered, or tendered, or ready to be delivered by you and your brother?

Interrogatory Third.

Was it not agreed that a part of the purchase money should be

paid in hand, before the deed should be given from the executors; and was not the part at least one-fifth, or how much was it? Was it not paid before the deed aforesaid was delivered to you and your brother; or when was it paid?

Interrogatory Fourth.

Why do you say, (if such be your answer,) that the deed and mortgage were agreed to be executed and delivered as simultaneous acts, or at the same time, and that they were delivered as simultaneous acts from the grantors to the grantees respectively? Do you or do you not mean thereby to affirm any thing else, that it was understood, that if the executors would give you and your brother a deed for the property, you and he would upon the executor's doing so, execute a mortgage to them, to secure payment of the balance of the purchase money? and that the said deed and mortgage were accordingly given in pursuance of that understanding?

Interrogatory Fifth.

Was or was not any money or property of the estate of Susan Mayburry applied at any time, and when, to paying the purchase money of the Catoctin Furnace or lands? If yea, when, and what amount or value and description of property was so applied? Or did your brother make any such application on his purchase of your interest, and when, and in what amounts?

Interrogatory Sixth.

What was the agreement between you and your brother for the purchase of your interest in the Catoctin Furnace and property aforesaid; as to price, terms, and all conditions respecting title and conveyances, and otherwise? Did you and he stipulate that your Deed should not be executed and delivered until his mortgage to you should be executed and delivered, or tendered or ready to be delivered, by him to you? If you testify that they were to be simultaneous acts and were as such delivered, why do you so characterize them? Do you mean thereby to convey any other idea than that it was understood that if you gave your brother a Deed for your said interest, your brother would give you a Mortgage to secure the balance of the purchase money?

The plaintiff protests that the Interrogatories of the Defendant are inadmissible, and that the answers thereto cannot when given, be read in this cause, because said Interrogatories are leading and in other respects irregular; and further, because no evidence by parol such as is sought by said Interrogatories, touching said Deeds and Mortgages in the Interrogatories is competent or proper, and because no other evidence than the respective Deeds and Mortgages themselves is competent or proper upon the points of said Interrogatories.

CHARLES F. MAYER,
Plaintiff's Solicitor.

The Plaintiff names no other commissioners than those nominated by Defendant.

C. F. M.

And now here at this Term, to wit, April Term, one thousand eight hundred and thirty-three, of the said Circuit Court, the said cause thus standing was continued until November Term next.

And now here at this Term, to wit, November Term, one thousand eight hundred and thirty-three, of the said Circuit Court, the said cause thus standing was continued until April Term next.

And now here at this Term, to wit, April Term, one thousand eight hundred and thirty-four, at the said Circuit Court, the said cause thus standing, was continued until November Term next.

And now here at this Term, to wit, November Term, one thousand eight hundred and thirty-four, of the said Circuit Court, the said Susan Mayburry by her Solicitor aforesaid, suggests to the said Circuit Court here, that since the last continuance of the said cause, the said John Brien hath departed this life, to wit, at the district aforesaid, and that he died intestate, as it is said.

Afterwards, to wit, on the second day of April, in the year of our Lord one thousand eight hundred and thirty-five, the said Susan Mayburry by Charles F. Mayer, James Dixon and Reverdy Johnson, her solicitors, filed in the said cause her Bill of Revivor against John McPherson Brien, Catherine Brien, Henry Augustus Brien and Luke Tiernan Brien, which said Bill of Revivor is in the words following, to wit:

Bill of Revivor.

To the Honourable, the Circuit Court of the United States for the Fourth Circuit in and for the District of Maryland.

The Bill of Susan Mayburry, a citizen of the State of Virginia, respectfully shows that she heretofore exhibited her Bill of Complaint in this Honourable Court, against a certain John Brien a citizen of the State of Maryland, stating that your Oratrix was entitled to Dower in certain lands in Frederick County of which said Brien was seized, in said Bill particularly described, and praying that her Dower therein might be assigned to her, and also that said Brien might account for and pay over, with all interest thereon, the amount of rents and profits of her Dower proportional interest in said lands accrued, and that should accrue, since her said Dower right became perfect by the death of her husband, Willoughby Mayburry, and praying such other and further relief in the premises as to your Honourable Court might seem just and proper. And your Oratrix states that said Brien answered her said Bill, and that depositions under consent were taken in the cause and various proceedings had; for which said Bill, answer, deposition and proceedings, your Oratrix refers to the same as they are filed and appear in this Honourable Court. Your Oratrix now states, that said John Brien has lately departed this life intestate, leaving the following persons his only heirs at law, to wit: his sons, John McPherson Brien, of

Washington County, in Maryland, Henry Augustus Brien, of Frederick County in said State, William Coleman Brien, of Washington County aforesaid, and Luke Tiernan Brien, only son and heir of Robert Coleman Brien, deceased, who was son of said John Brien, which Luke Tiernan Brien is an infant under twenty-one years of age; and your Oratrix states that since the death of said John Brien, the said William Coleman Brien hath departed this life, leaving a widow Catherine Brien, of Washington County aforesaid, but that he died intestate and without issue. And now inasmuch as it is right that the said suit and proceedings, having abated by the death of said John Brien, should be and stand revived against said heirs and said Catherine. To the end therefore, that the same may so stand revived and be in the same plight and condition as the same were in at the time of such abatement—may it please your Honourable Court to grant to your Oratrix the writ of the United States of subpœna, directed to said John McPherson Brien, and Catherine Brien of Washington County, and Henry Augustus Brien of Frederick County, and said Luke Tiernan Brien, who is of the City of Baltimore, in the State of Maryland aforesaid, and all which said John, and Catherine, and Henry, and Luke, are citizens of the State of Maryland, commanding them to be and appear in this Honourable Court by a certain day, to answer the premises, and therein to stand to and abide by such order and decree as to this Honourable Court shall seem right.

CHARLES F. MAYER,
JAMES DIXON,
REVERDY JOHNSON,
Solicitors of Plaintiff.

And now here at this term, to wit, April Term, one thousand eight hundred and thirty-five, of the said Circuit Court, the said cause thus standing was continued until November Term next.

And now here at this term, to wit, November Term, one thousand eight hundred and thirty-five, of the said Circuit Court, the said cause thus standing, was continued until April Term next.

And now here at this term, to wit, April Term one thousand eight hundred and thirty-six, of the said Circuit Court, the said cause thus standing, was continued until November Term next.

And now here at this term, to wit, November Term, one thousand eight hundred and thirty-six, of the said Circuit Court, to wit, on the eighth day of December, in the year of our Lord one thousand eight hundred and thirty-six, the said Susan Mayburry, by her solicitors aforesaid, filed in the said cause the following Petition.

Petition.

SUSAN MAYBURRY *vs.* LUKE TIERNAN BRIEN, and others. } In Equity. Circuit Court U. S., Fourth Circuit, Maryland District.

The Plaintiff prays the Court to appoint a Commissioner for

assigning a guardian to take the answer in this case of the Infant Defendant Luke Tiernan Brien, who has been summoned.

CHARLES F. MAYER,
Solicitor of Plaintiff.

Whereupon the Court made and passed the following Order.

Order of the Court.

In the Circuit court of the United States, for the fourth Circuit, in and for the District of Maryland. } November Term, 1836.

Ordered by the Court, this 8th December, 1836, that Brantz Mayer be, and he is hereby, upon the above application, appointed a Commissioner to assign a guardian for taking the answer of the above mentioned Infant, and that a commission issue to said Commissioner accordingly.

R. B. TANEY,
U. S. HEATH, *D. Judge.*

Afterwards, to wit, on the tenth day of December, in the year of our Lord one thousand eight hundred and thirty-six, a commission was issued to Brantz Mayer, Esquire, in pursuance of a special order of the said Court, in the words and of the tenor following, to wit:

Commission to Assign Guardian, and take Answer of the Infant Defendant.

THE UNITED STATES OF AMERICA, *District of Maryland, to wit:*

To Brantz Mayer, Esquire, Greeting.

Whereas, Susan Mayburry hath lately exhibited her [SEAL.] Bill of Complaint before us in our Circuit Court of the United States for the Fourth Circuit in and for the Maryland District, against John Brien, John McPherson Brien, Henry Augustus Brien, Luke Tiernan Brien, and Catherine Brien, Defendants:—And whereas we have by our writ lately commanded the said Defendants to appear before us in our said Court at a certain day, now past, to answer unto the said Bill: But forasmuch as the said Luke Tiernan Brien is an Infant under age, and cannot answer the said Bill: Know ye, therefore, that we have given unto you full power and authority, in pursuance of the special order in our said Court, to assign and appoint a Guardian for the aforesaid Infant, and to take the answer of the said Infant by such Guardian to the said Bill:—and therefore we command you, that at such certain day and place as you shall think fit, you go to the said Infant, if he cannot come conveniently to you, and assign and appoint a

Guardian for the aforesaid Infant, and take the answer of the said Infant by such Guardian to the said Bill, on such Guardian's corporal oath, upon the Holy Evangely of Almighty God to be administered by you, the said answer being distinctly and plainly written, and when you shall have taken such answer, you are to send the same closed up under your hand and seal, together with your certificate of your having assigned and appointed such Guardian as aforesaid, and this writ, unto us in our Circuit Court aforesaid. Witness the Honourable Roger B. Taney, Chief Justice of our Supreme Court, the first Monday in August, in the year of our Lord one thousand eight hundred and thirty-six.

Issued 10th December, 1836.

THOS. SPICER,
Clerk Circuit Court.

Afterwards, to wit, on the twenty-seventh day of December, in the year of our Lord one thousand eight hundred and thirty-six, the said Brantz Mayer, Esquire, to whom the said aforegoing commission was in form aforesaid directed, makes return thereof to the Court here, together with the answer of the said Infant Defendant, Luke Tiernan Brien, in form following to wit:

Return of the Commission.

SUSAN MAYBURRY *vs.* JOHN BRIEN, and others. } To the Honourable the Circuit Court of the United States for the Fourth Circuit, in and for the Maryland District.

The undersigned respectfully returns that, pursuant to the authority vested in him by the foregoing Commission, he did on the twenty-seventh day of December, in the year eighteen hundred and thirty-six, assign and appoint Luke Tiernan Guardian to the Infant in said Commission named, and did take the answer of the said Infant by the said Guardian on his corporal oath by the undersigned administered, which answer hereto annexed is herewith returned, together with said Commission. Witness my hand and seal, this 27th day of December, 1836.

BRANTZ MAYER. [SEAL.]
Comm'n.

Answer of the Infant Defendant.

The answer of Luke Tiernan Brien, infant under the age of twenty-one years, by Luke Tiernan, Guardian, in that behalf specially appointed, to the bill of complaint of Susan Mayburry against John Brien and others in the Circuit Court of the United States for the fourth Circuit in and for the Maryland District, exhibited:

The defendant, answering by his Guardian aforesaid to the said Bill of Complaint, says that he is ignorant of the merits of the several matters and things charged and set forth in said bill, and relies

on the defence in said cause, set up by John Brien, deceased, praying that the Court will protect his interest in the premises, and prays to be hence dismissed without costs, &c.

LUKE TIERNAN, *Guardian.*

The Guardian above named makes oath on the Holy Evangely of Almighty God, that the matters and things stated in the foregoing answer are true to the best of his knowledge and belief.

Sworn before the subscriber, Commissioner for that purpose appointed.

BRANTZ MAYER, *Commissioner.*

On the same day, the said John McPherson Brien, Henry Augustus Brien, and Catherine Brien, by their solicitor aforesaid, filed in the said cause their joint and several answer to the said bill of revivor in the words following, to wit:

Joint and Several Answer of J. McP. Brien, Henry A. Brien, and Catherine Brien.

To the Honourable, the Circuit Court of the United States for the fourth Circuit, in and for the District of Maryland.

The joint and several answer of John McPherson Brien, Henry Augustus Brien, and Catherine Brien to the Bill of Revivor of Susan Mayburry, filed against these defendants, and Luke Tiernan Brien, an infant.

These defendants admit the filing of the original bill of complaint in this Honourable Court, against John Brien, as in this bill of revivor is set forth and mentioned, thereby stating and praying to the effect in the said bill set forth, so far as the same is therein set forth, and these defendants admit that the said John Brien in said bill named, hath departed this life intestate, leaving at the time of his death the defendants, John McPherson Brien, Henry Augustus Brien, Luke Tiernan Brien, and a certain William Coleman Brien, his heirs at law; and that after the death of said John Brien, the said William Coleman Brien departed this life intestate, and without issue, leaving the defendant Catherine Brien his widow. And these defendants say that relying upon all the matters of defence stated and alleged in the answer of the said John Brien to the said original bill, they submit that the said suit and the proceedings had therein should stand and be revived against them, these defendants, as such heirs at law, and representatives as aforesaid.

J. MEREDITH, *for Def'ts.*

The above answer is accepted without oath.

CHARLES F. MAYER,
Sol. of Plff.

On the same day, the said parties by their solicitors aforesaid, filed in the said cause the following admission.

SUSAN MAYBURRY *v.* BRIEN AND OTHERS.	}	Equity side of the Circuit Court U. S. for the District of Maryland.

Admission.

It is admitted that Baker Johnson and William Ross were executors of Baker Johnson, deceased.

J. MEREDITH, *for Def'ts.*
CHARLES F. MAYER, *for Pl'ff.*

On the same day, the said parties, by their solicitors aforesaid, filed in the said cause and agreement, in the words following, to wit:

SUSAN MAYBURRY *v.* JOHN MCPHERSON BRIEN AND OTHERS.	}	Circuit Court of U. S. in and for the Maryland District. Bill of Revivor. Answer filed.

Agreement.

It is agreed, that in this case a decree pro forma shall be made, dismissing the bill of the Complainant, with costs.

J. MEREDITH, *for Deft's.*
CHARLES F. MAYER, *for Pl'tff.*

27th December, 1836.

And now here, at this day, to wit, the said twenty-seventh day of December, in the year of our Lord one thousand eight hundred and thirty-six, the Court here made and passed the following decree in the said cause, to wit:

SUSAN MAYBURRY *v.* JOHN MCPHERSON BRIEN AND OTHERS.	}	In the Circuit Court of the United States for the fourth Circuit, in and for the District of Maryland.

Decree.

This cause being submitted; the bills (original and revivor), and the answer and testimony were read and considered; whereupon it is, this twenty-seventh day of December, in the year eighteen hundred and thirty-six, by this court adjudged, ordered and decreed,

that the bill of the plaintiff be, and the same is hereby (pro forma) dismissed, with costs, to be taxed by the Clerk.

R. B. TANEY,
U. S. HEATH, *Ds. Judge.*

From which said decree so as aforesaid made, the said Susan Mayburry, by her solicitors aforesaid, hath prayed an appeal to the Supreme Court of the United States, to be held at the City of Washington on the second Monday in January next, and to her it is granted: therefore, it is ordered by the Court here, that the record and proceedings aforesaid, with all things relating to the same, be transmitted to the said Supreme Court, and the same are transmitted accordingly.

Know all men by these presents, that we, Thomas G. Harris, and John T. Cookus, are held and firmly bound unto John McPherson Brien, Henry Augustus Brien, Luke Tiernan Brien, and Catherine Brien, in the sum of five hundred dollars lawful money of the United States, to be paid to the said John McPherson Brien, Henry Augustus Brien, Luke Tiernan Brien, and Catherine Brien, heirs at law of John Brien, late of Frederick, Frederick County, Maryland, their certain attorney, executors, administrators or assigns, to which payment well and truly to be made and done, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this 28th day of December, in the year of our Lord one thousand eight hundred and thirty-seven.

Whereas lately, at a Circuit Court of the United States for the fourth Circuit, in and for the Maryland District, in a certain cause depending on the equity side of the said court, wherein Susan Mayburry was complainant, and the said John McPherson Brien, Henry Augustus Brien, Luke Tiernan Brien, and Catherine Brien, were defendants, by the decree of the same court, the bill of complaint of the said Susan Mayburry was dismissed *pro forma* with costs.

And whereas, the said Susan Mayburry, by her solicitor, hath prayed an appeal from the said decree so as aforesaid rendered, to the Supreme Court of the United States to be held at the City of Washington on the second Monday in January next.

Now the condition of the above obligation is such, that if the above bound Susan Mayburry shall well and truly prosecute with effect her said appeal, and pay to the said John McPherson Brien, Henry Augustus Brien, Luke Tiernan Brien, and Catherine Brien, all damages, costs and charges of the said Circuit Court, and also all such costs and charges as may be decreed against her by the said Supreme Court, in case she shall fail to make good her said appeal, then the above obligation to be void and of none effect, otherwise to be and remain in full force and virtue.

Sealed and delivered in the presence of E. J. LEE, jr. as to T. G. H. and J. T. C.

THOMAS G. HARRIS. [SEAL.]
JOHN T. COOKUS. [SEAL.]